

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

— — —

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 15-20652

vs.

Hon. George Caram Steeh

BILLY DARRELL ARNOLD D-1,
ROBERT BROWN, II D-6,
JEROME GOOCH D-7 and
DEVON PATTERSON D-10,

Defendants.

MOTION TO SUPPRESS

BEFORE THE HONORABLE GEORGE CARAM STEEH
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Thursday, August 31, 2017

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1 Detroit, Michigan

2 Thursday, August 31, 2017

3 at about 9:16 a.m.

4 — — —

5 (Court, Counsel and Defendant Arnold present.)

6 THE CASE MANAGER: Please rise.

7 The United States District Court for the Eastern

8 District of Michigan is now in session, the

9 Honorable George Caram Steeh presiding.

10 You may be seated.

11 Case No. 15-20652, United States vs. Billy Arnold.

12 You may be seated.

13 THE COURT: Good morning.

14 MR. GRAVELINE: Good morning, Your Honor. Chris

15 Graveline, and Justin Wechsler, and Julie Finocchiari on

16 behalf of the United States.

17 THE COURT: Welcome.

18 MS. MANNARINO: Good morning. Maria Mannarino on

19 behalf Mr. Billy Arnold, who is present.

20 MR. KOSELKE: And Eric Koselke on behalf of

21 Mr. Arnold.

22 MS. MANNARINO: Good morning. Also at counsel

23 table with us, for the record, is our paralegal Cathy Murphy.

24 THE COURT: Okay. Fine. The first matter to

25 address, I think, is the motion to suppress filed on behalf

1 of Mr. Arnold.

2 MR. GRAVELINE: That's correct, Your Honor.

3 THE COURT: All right. Mr. Graveline.

4 MR. GRAVELINE: The government will be calling
5 three witnesses this morning. We will begin with FBI
6 Special Agent Vince Ruiz.

7 THE COURT: Okay. Good morning.

8 SPECIAL AGENT RUIZ: Good morning.

9 THE COURT: I'm going to have you take an oath.

10 Do you swear that the testimony you are about to
11 give in this cause will be the truth, the whole truth, and
12 nothing but the truth, so help you God?

13 SPECIAL AGENT RUIZ: I do.

14 THE COURT: All right. Take a seat, please. I'm
15 going to have you begin by stating your name and spelling
16 your last name for us.

17 SPECIAL AGENT RUIZ: Certainly. My name is
18 Vicente, V-I-C-E-N-T-E, Ruiz, R-U-I-Z.

19 THE COURT: All right. Thank you. You may
20 proceed.

21 MS. MANNARINO: I'm sorry, Judge. If I might? I
22 don't know if there is a sequestration order in place. There
23 are other witnesses, and I believe there are other witnesses
24 in the courtroom. I would ask that they be sequestered for
25 purposes of this hearing.

1 MR. GRAVELINE: We have no problem with the
2 sequestration order, Your Honor. Both of the Detroit police
3 officers that are going to testify are outside of the
4 courtroom right now. The only other federal agent is
5 Special Agent Shawn Horvath, who is not going to be a witness
6 in this motion. He will be a trial witness but I don't
7 believe on the facts of September 25th/26th, 2013, so I would
8 ask if Agent Horvath can stay in the courtroom?

9 THE COURT: Any objection, Ms. Mannarino?

10 MS. MANNARINO: If he's not going to be a fact
11 witness as to the events I have no objection.

12 THE COURT: Okay. All right. You may proceed.

13 MR. GRAVELINE: Thank you. They are in the witness
14 room down the hallway.

15 THE COURT: That's fine. Thanks.

16 SPECIAL AGENT VICENTE RUIZ,
17 called at about 9:24 a.m., was examined and testified on his
18 oath as follows:

19 DIRECT EXAMINATION

20 BY MR. GRAVELINE:

21 Q. Agent Ruiz, who do you work for?

22 A. I work for the FBI.

23 Q. And specifically what group or task force do you work
24 with?

25 A. I'm part of the Violent Gang Task Force here in Detroit.

1 Q. What are some of your duties as part of the Violent Gang
2 Task Force?

3 A. We investigate violent gangs looking at federal
4 violations to include gun violations, drug violations, VICAR
5 incidents, nonfatal shootings, homicides, witness
6 intimidation and others.

7 Q. I'm going to take you back to 2015, and specifically
8 September 25th, 2015?

9 A. Okay.

10 Q. Were you investigating a particular gang at that time?

11 A. I was.

12 Q. And what gang is that?

13 A. It was the Seven Mile Bloods.

14 Q. And did you receive certain information in the days
15 leading up to September 25th, 2015 about the
16 Seven Mile Bloods?

17 A. Yes, I did.

18 Q. What was that information?

19 A. There was going to be a party at the Crazy Horse, which
20 is a dance club on Michigan Avenue near Lonyo. It was going
21 to be a party in remembrance of one of the gang members, his
22 name was Devon McClure, who also went by the street name of
23 Rider or Block.

24 Q. So you say this was going to be at the Crazy Horse club,
25 is that in the City of Detroit?

1 A. It is.

2 Q. All right. And you said that the party, from what you
3 understood was going to be in remembrance of a deceased Seven
4 Mile Bloods member by the name of Rider or Block?

5 A. That's correct.

6 Q. And how did you actually come into this information?

7 A. It was a social media post calling it a block party, had
8 a photo of him, and had the date and time that it was to
9 occur.

10 Q. And with that information, did you come up with a plan
11 about how this might assist you in your investigation of this
12 group?

13 A. Yes, I did.

14 Q. And what was your plan?

15 A. The plan was to conduct surveillance on the club, we
16 figured that we would probably see many of the Seven Mile
17 Bloods gang members show up for this party, and given their
18 propensity for violence some of those gang members might be
19 armed with firearms or might have them in their car, so our
20 goal was to identify the key folks that we wanted to
21 investigate that evening. We had a list of I think it was
22 about six guys that we were going to attempt to traffic stop
23 if they arrived. And we set up multiple surveillance teams,
24 both static and dynamic surveillance. We partnered with
25 Michigan State Police, Detroit Police departments, Gang Intel

1 Unit as well as their TRU group.

2 Q. Excuse me. You just used an acronym. What is TRU?

3 A. I think it is Tactical Response Unit is what that stands
4 for.

5 Q. And you also mentioned static surveillance. What is a
6 static surveillance?

7 A. So we had vehicles that were not moving but people could
8 conduct surveillance from those vehicles as well as people
9 that were in vehicles that were moving up and down the street
10 to help gather license plates for vehicles that were arriving
11 to the club that night.

12 Q. Were you personally out there at the club that night?

13 A. I was.

14 Q. And in your investigation before that date had you
15 already identified someone by the name of Billy Arnold as a
16 person of interest?

17 A. I did.

18 Q. And did you see Billy Arnold arrive that night on
19 September 25th?

20 A. Billy Arnold and others.

21 Q. All right. And so you personally saw Billy Arnold
22 arrive that night?

23 A. I did.

24 Q. And what type of vehicle did he arrive in?

25 A. It was a blue TrailBlazer I believe.

1 Q. And was -- did you or another member of your team, were
2 you able to identify the license plate of that car?

3 A. It might have been another member of the team called out
4 the license plate, and obviously we had analysts that were
5 running license plates for us throughout the night.

6 Q. All right. And that particular license plate, were you
7 able to -- so they were able to identify it?

8 A. Correct.

9 Q. What state was that from?

10 A. It was an Ohio license plate.

11 Q. And do you remember the numbers of that plate?

12 A. The license plate was GJH 1851.

13 Q. And was that Ohio license plate called in that night to
14 find out about the registration of that vehicle?

15 A. Yes, yes, it was.

16 Q. And what was the information provided back to you?

17 A. That it had been reported stolen.

18 Q. And so when you observed Mr. Arnold arrive that night,
19 was he the only person that arrived in that TrailBlazer?

20 A. No.

21 Q. Who else was there with him?

22 A. Steve Arthur.

23 Q. And did -- prior to September 25th, 2015, had you
24 identified Steven Arthur as a person of interest?

25 A. Yes.

1 Q. And so were they the only two people in the TrailBlazer
2 when it arrived?

3 A. I would have to review the video to be certain but I
4 think, yes.

5 Q. And do you remember who was driving and who was the
6 passenger at that time?

7 A. Steve Arthur was driving, and Billy Arnold was the
8 passenger.

9 Q. And do you remember the approximate time that they
10 showed up there that night?

11 A. I would have to review my 302. I want to say it was
12 late in the 11:00 hour.

13 Q. I'm sorry, I think I left your 302 back in the office.
14 But -- so did you remain at the Crazy Horse as --
15 past midnight and into the early morning hours of September
16 26th --

17 A. Yes.

18 Q. -- 2015?

19 A. Yes, I did.

20 Q. Once you obtained the information that this vehicle was
21 a stolen vehicle, what was your plan at that point?

22 A. At that point the plan was we had several surveillance
23 teams, we assigned a surveillance team to take that car away
24 when the occupants came back out of the club and decided to
25 travel away for the evening. That's essentially what

1 happened.

2 Q. All right. So did you pass that information along to
3 other members of the surveillance teams that night?

4 A. Yes.

5 Q. And did you, in fact, see who left the club that night
6 in that TrailBlazer?

7 A. It was Steve Arthur and Billy Arnold.

8 Q. And who was driving the TrailBlazer at the time?

9 A. Steve Arthur.

10 Q. And where was Billy Arnold in terms of the -- inside of
11 that vehicle?

12 A. He got in the front passenger seat.

13 Q. Now, do you remember approximately what time that was
14 when they left?

15 A. I want to say late in the 1:00 hour, maybe early in the
16 2:00 hour.

17 Q. And at that point the plan was to do a traffic stop of
18 that vehicle?

19 A. Correct.

20 Q. And are you aware whether a traffic stop was attempted
21 on that vehicle?

22 A. Yes, I am.

23 Q. And eventually was that vehicle stopped?

24 A. Yes.

25 Q. And did you personally go to the scene of that stop that

1 night?

2 A. I did not.

3 Q. Was that vehicle eventually towed that night?

4 A. It was, yes.

5 Q. And was it taken into FBI custody that night?

6 A. I think initially it was in DPD custody, but we asked
7 them to put a hold on it for us.

8 Q. And so the FBI actually had it in the -- in its evidence
9 custody after that night?

10 A. Correct.

11 Q. And were you able to determine who the actual owner of
12 the vehicle was?

13 A. Yes.

14 Q. I'm going to show you what was attached as Exhibit 2 to
15 our motion.

16 Your Honor --

17 THE COURT: Uh-huh.

18 MS. MANNARINO: Can I see it?

19 BY MR. GRAVELINE:

20 Q. I'm sorry. You were saying you were able to identify
21 who the owner of the vehicle was?

22 A. Yes.

23 Q. Who was that?

24 A. I believe her name was Tesha Robinson.

25 Q. Did you meet Ms. Robinson?

1 A. Yes.

2 Q. Did you ask her if you had her consent to search the
3 vehicle?

4 A. Yes.

5 Q. And did you obtain that consent?

6 A. We obtained consent on October 5th, 2015.

7 Q. Now, at that point had certain items already been
8 retrieved out of evidence from that vehicle?

9 A. Yes.

10 Q. And you had prepared -- I'm going to show you what was
11 attached to the government's exhibit as Government's
12 Exhibit 3, the motion, Exhibit 3. Specifically, I'm going to
13 point you to page 5 of Exhibit 3.

14 A. Okay.

15 Q. Did you seek and fill out an application and affidavit
16 for a search warrant of certain items that had been seized
17 from that vehicle?

18 A. Yes.

19 Q. And what date did you apply for that search warrant?

20 A. That was October 7th, 2015.

21 Q. And specifically, were you seeking authority to search
22 six cell phones that had been seized from that vehicle?

23 A. Yes.

24 MR. GRAVELINE: Thank you. No further questions,
25 Your Honor.

1 THE COURT: All right. Thank you.

2 Ms. Mannarino?

3 MR. GRAVELINE: I'm sorry, there are three more
4 questions, Your Honor. I apologize.

5 THE COURT: Okay.

6 MR. GRAVELINE: I apologize.

7 BY MR. GRAVELINE:

8 Q. So with this vehicle in FBI custody, when the FBI takes
9 a vehicle into its evidentiary control, what is -- is it
10 common to do an inventory search of that vehicle?

11 A. Yes.

12 Q. And why is it that the FBI does an inventory search?

13 A. Just to make sure that any property that was in there
14 can't end up being reported as missing or stolen or whatever
15 by the occupants of that vehicle.

16 Q. And so with this vehicle, even though there had been the
17 initial search of that vehicle on September 25th/26th, and a
18 consent, would the FBI also have conducted an inventory
19 search of that vehicle?

20 A. Certainly.

21 MR. GRAVELINE: Thank you. No further questions.

22 THE COURT: All right. Thank you.

23 Ms. Mannarino?

24

25

1 CROSS-EXAMINATION

2 BY MS. MANNARINO:

3 Q. Good morning.

4 A. Good morning.

5 Q. Agent Ruiz, you -- on September 25th you were in charge
6 of a surveillance at the Crazy Horse; is that correct?

7 A. Yes.

8 Q. And part of that surveillance involved other units who
9 were static?

10 A. Correct.

11 Q. And what does that mean?

12 A. Not moving.

13 Q. And how many?

14 A. Oh, jeez, there was quite a few units out there. I
15 don't know the exact number.

16 Q. Umm --

17 A. I would say we probably had, a guess, maybe 60 law
18 enforcement agents or officers.

19 Q. All right. So the area was pretty well covered?

20 A. Yes.

21 Q. So it had static in all avenues of egress and ingress;
22 is that right?

23 A. That's correct.

24 Q. Nobody was going to come or go without you knowing about
25 it?

1 A. Correct, that's what we had hoped anyway.

2 Q. And this was -- and then there was also cameras set up,
3 correct?

4 A. There was.

5 Q. And a camera was set up to capture everything that
6 happened coming and going?

7 A. We had it set up kind of directed at the front entrance
8 of the club that night.

9 Q. And what time was that set up?

10 A. Early in the day, my guess is somewhere maybe around
11 4:00 p.m.

12 Q. Okay. And to your knowledge it recorded everything
13 that -- everybody who came and went at the club throughout
14 the course of that night?

15 A. Correct.

16 Q. Coming and going?

17 A. Yes.

18 Q. Even as people were leaving?

19 A. Yes.

20 Q. It captured who left?

21 A. It did.

22 Q. Okay. And in addition to that, there was also -- did I
23 see that there was also helicopter support, air support?

24 A. We did have some helicopter support that night as well
25 as canine support too.

1 Q. And this was in response to information you had gotten
2 that there would be a memorial for somebody by the name of
3 Devon McClure?

4 A. That's correct.

5 Q. And that it was your belief that at this memorial for
6 Devon McClure that there would be perhaps members of the
7 Seven Mile Bloods?

8 A. Yes, that's correct.

9 Q. Because it was your belief that Devon McClure was a
10 member of the Seven Mile Bloods?

11 A. Yes.

12 Q. And being a member of the Seven Mile Bloods in and of
13 itself is not a crime; is that fair?

14 A. Fair.

15 Q. And so you wanted to see if other people that you
16 associated with the Seven Mile Bloods would be at this
17 memorial?

18 A. Right.

19 Q. Because you expected people who knew Devon McClure to go
20 and participate in the memorial for him?

21 A. Correct.

22 Q. Okay. His friends, correct?

23 A. Yes.

24 Q. His family?

25 A. Possibly.

1 Q. There were members of his family there too, weren't
2 there?

3 A. I believe there were.

4 Q. People who were -- thought of Devon McClure as a friend
5 or an associate or a classmate would be there to honor his
6 memory?

7 A. Sure.

8 Q. But you specifically wanted to see and get some
9 information regarding some specific people that night,
10 correct?

11 A. Right.

12 Q. I believe you said there was, in fact, a list of -- was
13 it at least six people that you wanted to target?

14 A. Yes, I believe it was either four or six.

15 Q. Do you know who those people were?

16 A. I do.

17 Q. Who were those people?

18 A. Donell Hendrix was one of those people, Derrick Kennedy
19 was one of those people, Billy Arnold was one of those
20 people, I think Jeffery Adams was one of those people.

21 Q. And those people were because of other information that
22 you had that led you to want to target them?

23 A. That's right.

24 Q. So you were going to find some reason to make contact
25 with those people?

1 A. Sure.

2 Q. And when -- did you say Steve Arthur, was Steve Arthur
3 one of those people?

4 A. I would have to look at the operation plans from that
5 night to determine if he was one of the six. He was
6 definitely one of the identified members that we had.

7 Q. Sure, he was somebody who was on your radar?

8 A. Right, but due to limited resources we were specifically
9 targeting certain individuals.

10 Q. Okay. And -- but you don't recall right offhand whether
11 Steve Arthur was one of those people who you were going to
12 target to make some contact with that night?

13 A. Right, but be mindful that in addition to those
14 individuals that we said, hey, these are the ones we are
15 focusing on this evening, we had a printout with all
16 identified members and associates so that way should officers
17 do a traffic stop and there are multiple people in the
18 vehicle they would know if, in fact, there was somebody on
19 that list that was important to us.

20 Q. And if they made contact with somebody on the list who
21 was important to you, they would find a reason to --

22 A. That information would be relayed back to the command
23 post, and we would make determinations from there.

24 Q. So these people that you had targeted, it was because
25 you had some specific information about them; is that right?

1 A. That's right.

2 Q. And Steve Arthur was somebody you had some specific
3 information about?

4 A. He was.

5 Q. Okay. And when you have information about these people,
6 is it fair to say that you wanted as much information about
7 these people as possible in the course of your investigation?

8 A. That's correct.

9 Q. So did you have, for example, information regarding
10 where any of these targeted individuals lived?

11 A. We did have some information.

12 Q. Who they were associated with?

13 A. Yes, we had that information also.

14 Q. What kind of vehicles they drove?

15 A. We had some of that information as well.

16 Q. Okay. Did you have any of that information regarding
17 Steve Arthur, do you know?

18 A. No, I do not.

19 Q. Okay. Do you know whether or not there was any specific
20 vehicle that Mr. Arthur may have been associated with or seen
21 in possession of previously?

22 A. No, I do not.

23 Q. You don't know that now or is that -- strike that.

24 Is that information that you would seek to develop?

25 A. Absolutely. I mean, I would have liked to have known

1 all sorts of information about everybody.

2 Q. Sure, because that's what you were doing there that
3 night?

4 A. Correct.

5 Q. Right. You were taking license plates, you were trying
6 to associate people with vehicles and gather as much
7 information about these people?

8 A. That is correct.

9 Q. So you indicated that you -- you saw Billy and
10 Steve Arthur arrive together that night; is that correct?

11 A. That's correct.

12 Q. And you knew who Billy Arnold was?

13 A. I did.

14 Q. And you knew who Steve Arthur was?

15 A. I did.

16 Q. And then afterwards did you fill out a 302 describing
17 what you saw that night?

18 A. Yes.

19 Q. Did you indicate in the 302 --

20 A. Let me clarify that. I personally did not write the
21 302, there was a 302 done for that evening for the
22 surveillance that was conducted.

23 Q. Well, who would have filled that out?

24 A. I believe it was written by Jeffery Wittfield.

25 Q. Okay. But your name appears on the 302 also, right?

1 A. It may as a coauthor.

2 Q. You indicated before that you don't have it with you?

3 A. I do not -- I did not bring it.

4 MS. MANNARINO: May I approach, Judge?

5 THE COURT: Yes.

6 BY MS. MANNARINO:

7 Q. Is that the 302 that was completed after the
8 surveillance at the Crazy Horse?

9 A. Yes, this is the one.

10 Q. Okay. And that purports to detail in a timeline fashion
11 all of the comings at the club that evening; is that correct?

12 A. That's correct.

13 Q. And there are a couple of pages of detailing all of the
14 comings, right?

15 A. That's correct.

16 Q. Who arrived, what car they arrived in; is that correct?

17 A. That is correct.

18 Q. All right. By looking at that, can you tell what time
19 you say that Billy Arnold and Steve Arthur arrived at the
20 club?

21 A. On the report here it was during the 1:00 hour.

22 Q. Well, what does the report say?

23 A. It has got 1:00 with question marks where the minute
24 times would be.

25 Q. So in the 1:00 hour but it doesn't detail what time; is

1 that correct?

2 A. Based on this report it occurred sometime between
3 12:44 a.m. and 1:20 a.m.

4 Q. Okay. Because the arrival before that vehicle, correct,
5 is detailed by the hour and the minute that car arrived,
6 correct?

7 A. Correct.

8 Q. And there -- the arrival of the vehicle after that is
9 detailed to the hour and the minute, correct?

10 A. Correct.

11 Q. But the vehicle that you say Billy Arnold arrived in
12 isn't detailed by any specific time?

13 A. Right.

14 Q. Is that fair?

15 A. Right, yes.

16 Q. Do you know why, when every other vehicle can be
17 detailed to the time and minute, there is no detail as to the
18 time that vehicle arrived?

19 A. The explanation I can offer is that a lot of these
20 vehicles arrived at about the same time, and it could be that
21 while somebody is taking notes as to the license plate of
22 those vehicles he may not have jotted down the time at that
23 exact moment. When we went through this I remember recalling
24 that we thought these vehicles all arrived at the same time
25 but since it hadn't been noted I think that's why Jeff put in

1 the question marks.

2 Q. So you're speculating as to why we don't know what time
3 Billy and Steve arrived, right?

4 A. Yes, pure speculation.

5 Q. Okay. And it could be, you say, because he was busy
6 filling out the details for the vehicle in front?

7 A. Certainly.

8 Q. And the vehicle in front arrived how long before?

9 A. That one was at 12:44 a.m. -- I'm sorry, yeah, a.m.

10 Q. So the car that you detailed Mr. Arnold and Mr. Arthur
11 arriving in was at least 15 minutes later, if not more?

12 A. At least.

13 Q. And what about the vehicle after?

14 A. 1:20 a.m.

15 Q. Okay. So in a more-than-half-hour period there was one
16 vehicle that arrived?

17 A. True.

18 Q. Right?

19 A. True.

20 Q. Okay. So one colon -- we don't know what time -- is the
21 vehicle that you say Mr. Arthur and Mr. Arnold arrived in,
22 correct?

23 A. If we wanted to dial that time in we could look at the
24 vehicle.

25 Q. Okay. So the vehicle that Mr. Arnold and Mr. Arthur

1 arrived in sometime during that time period, Mr. Arthur being
2 known to you and your squad that was out there, correct?

3 A. Right, right.

4 Q. And Mr. Arnold being somebody who was known to you and
5 your squad that night, correct?

6 A. Right.

7 Q. In fact, as being one of the people who was being
8 targeted, right?

9 A. Correct.

10 Q. We were going to find some reason to pick up
11 Billy Arnold that night, right?

12 A. We were going to find a reason to do a traffic stop.

13 Q. Okay. So who was described as coming out of that
14 TrailBlazer at 1:00-something in the morning?

15 A. Two black males, one wearing red and black, exited the
16 vehicle.

17 Q. Not Steve Arthur?

18 A. No.

19 Q. Not a known target, right?

20 A. No.

21 Q. Not Billy Arnold, a known target?

22 A. Right.

23 Q. Other people are described by their name in that report;
24 is that correct?

25 A. I think you are referring to the notes as to what the

1 license plates returned to. Is that what you are referring
2 to?

3 Q. All right. Well, let's get to that. Every vehicle that
4 arrived that night --

5 A. Okay.

6 Q. -- a license plate is noted for that vehicle; is that
7 correct?

8 A. I wouldn't say every vehicle. I wouldn't say -- there
9 were quite a few vehicles at that club that night.

10 Q. But certainly the vehicle that you are now associating
11 with Mr. Arnold and Mr. Arthur, that is a license plate that
12 was noted?

13 A. Right.

14 Q. And you indicated that -- you indicated that there was
15 some kind of search into each of those license plates to
16 determine the status of them?

17 A. Correct.

18 Q. And you indicated that there was -- that you -- did you
19 personally conduct any kind of search of that or did somebody
20 else do that and relay the information to you?

21 A. That would have been one of our analysts.

22 Q. So you caused someone else to research that license
23 plate?

24 A. Yes.

25 Q. Is that correct?

1 A. Yes.

2 Q. And as a result of researching that license plate, you
3 received some information?

4 A. I did.

5 Q. Because you -- every single one of those license plates
6 that were observed that night were researched?

7 A. Any license plate that we called out that was of
8 interest to us, yes, we researched that license plate.

9 Q. And, in fact, the second part of that report details
10 what you learned about every single one of those license
11 plates, right?

12 A. That's correct.

13 Q. Okay. And it gives you that information?

14 A. Right.

15 Q. Tell us what information your report reflects was
16 received on the license plate associated with the vehicle
17 that Mr. Arthur and Mr. Arnold were reported in?

18 A. In this particular report it says came back with no
19 record.

20 Q. That's the information that you had that night?

21 A. That's not the information I had that night.

22 Q. Okay. But that's the information that was put in the
23 report?

24 A. That is correct.

25 Q. Okay. And you're indicating to us that you actually

1 received other information?

2 A. That's correct.

3 Q. Can you tell us where that information would be
4 reflected?

5 A. In the LEIN printout, not in this report.

6 Q. There is a LEIN printout?

7 A. Correct.

8 Q. You've seen the LEIN printout?

9 A. I have.

10 Q. When did you cause this LEIN printout to be run and
11 printed out?

12 A. It would have been run that night.

13 Q. Is there any -- is that -- has that printout then been
14 relayed to the U.S. attorneys on the file?

15 A. I don't believe it was.

16 Q. So you had information -- had a printout printed out
17 that was the basis for the stop of the vehicle that night but
18 it is not information that you preserved or presented?

19 A. It may not have been printed out that night but, yes, I
20 had information that that vehicle had been reported stolen.

21 Q. Is there any reason that's not in the 302 that you are
22 holding in your hands?

23 A. I can tell you what we generally do when we have reports
24 like this, is we draft those reports and then go back through
25 and do the license plates, we will rerun them. Okay. I

1 would be speculating here.

2 Q. Well, I don't want you to speculate.

3 A. Okay.

4 Q. You don't know why in this situation that information is
5 not reflected on the 302 that was prepared following the --

6 A. That's correct. I don't know why it says no record.

7 Q. But you will agree with me that that's indeed what that
8 302 says?

9 A. Yeah, that's what it says.

10 Q. And did you -- did you learn at some point that that
11 vehicle was in any way connected with Steve Arthur?

12 A. I learned that it was his girlfriend's vehicle.

13 Q. Just so I'm clear, that vehicle -- well, strike that.

14 That vehicle, in fact, belonged to Steve Arthur's
15 girlfriend?

16 A. Right.

17 Q. And Steve Arthur on the evening of August 25th, the
18 morning hours of the 26th, had permission to be in lawful
19 possession of that vehicle?

20 A. I think are you referring to September 25th?

21 Q. I'm sorry. I don't know what I just said but --

22 A. You said August.

23 Q. -- but that's exactly what I just meant.

24 A. I'm assuming she gave him permission to use it.

25 Q. Because you didn't have any information otherwise,

1 right?

2 A. That's correct.

3 Q. In fact, you had some contact with her after the fact
4 and she didn't indicate to you otherwise?

5 A. Right.

6 Q. All right. In fact, as of the evening of September 25th
7 and into the early morning hours of the 26th, that vehicle
8 was not considered by the owner to be a stolen vehicle?

9 A. I hadn't talked to the owner that night.

10 Q. But you subsequently found out that was true?

11 A. Days later. The information I had that night was that
12 it was a stolen vehicle.

13 Q. And that information -- the information that is not
14 reflected in your 302?

15 A. Right.

16 Q. Okay. There were, in fact, other vehicles that night
17 that you did learn were stolen?

18 A. Yes.

19 Q. Okay. And do you know which vehicles those were?

20 A. Not off the top of my head.

21 Q. Is that reflected in the 302?

22 A. I would have to read through the 302 to find out.

23 Q. You recall that there were other vehicles that had
24 been -- you know, the basis of the stop of those vehicles was
25 because they were stolen vehicles?

1 A. I believe there was one other vehicle that had been
2 reported stolen.

3 Q. Okay. And the reason you caused the stop of the vehicle
4 that Mr. Arthur was driving was because you thought that
5 vehicle was a stolen vehicle?

6 A. Yes.

7 Q. You indicated that at some point you see the --
8 Mr. Arnold leaving the Crazy Horse; is that correct?

9 A. I'm sorry. What was it?

10 Q. The evening of September 25th, into the early morning
11 hours of the 26th, at some point you see Mr. Arnold leaving
12 the Crazy Horse?

13 A. Yes.

14 Q. And Mr. Arnold leaves the Crazy Horse, and he's in the
15 company of Mr. Arthur?

16 A. That's correct.

17 Q. You see him go into the passenger side of the vehicle?

18 A. Right.

19 Q. And after the vehicle being driven by Mr. Arthur leaves
20 the Crazy Horse, what time is it?

21 A. Are you asking what time the vehicle left?

22 Q. Correct.

23 A. I don't know the exact time.

24 Q. Are the comings and goings reflected in the report?

25 A. At that time -- they are not, they are not. At that

1 time of the night it was a lot happening, it was multiple
2 vehicles leaving at the same time, and it just didn't get
3 captured in the report here.

4 Q. But you recall seeing Mr. Arnold and Mr. Arthur leaving?

5 A. Right.

6 Q. And, in fact, you made a note of them leaving together?

7 A. Yes.

8 Q. And it was your recollection now that it was about the
9 time that the party was breaking up?

10 A. Right.

11 Q. So what time was that, what time did the party break up?

12 A. I don't know the exact time.

13 Q. Well, if Mr. -- if you -- if your records reflect that
14 you saw Mr. Arnold arrive some time after 1:00 --

15 A. Okay.

16 Q. -- how much time do you think Mr. Arnold was at this
17 location before he left?

18 A. My guess, and it's purely that, he left in the 2:00 hour
19 sometime.

20 Q. Okay.

21 A. Like we said, we can certainly review the camera footage
22 and we would probably be able to dial that time in.

23 Q. So you think the party broke up sometime around 2:00?

24 A. Or later.

25 Q. And at that point, according to your notes, Mr. Arnold

1 would have been at the club less than an hour?

2 A. Or thereabouts.

3 Q. Okay. And so after he leaves you do something to cause
4 that vehicle to be stopped?

5 A. Yes.

6 Q. Okay. And you had already had that in place; is that
7 correct?

8 A. That's correct.

9 Q. And so sometime after 1:00 when the vehicle arrives, the
10 vehicle is run and you get information that leads you to
11 believe that it is a stolen vehicle, and then within the hour
12 the party breaks up and there's a lot going on and people are
13 leaving?

14 A. Right.

15 Q. So sometime after 1:00 you run the plate?

16 A. Yes.

17 Q. You get the information that it is stolen?

18 A. Right.

19 Q. Make contact with DPD giving them that information?

20 A. That's right.

21 Q. And giving them instructions on how -- you know, how and
22 to take this vehicle down?

23 A. That's correct.

24 Q. Okay. And so sometime around 2:00, DPD then, pursuant
25 to your instructions, goes to make a stop of the vehicle; is

1 that about what happened?

2 A. That's about right.

3 Q. You do not actually participate in the arrest of
4 Mr. Arnold?

5 A. I did not.

6 Q. You do not participate in seizing any items from him?

7 A. I did not.

8 Q. You do not participate in any search of the vehicle?

9 A. I did not.

10 Q. Or anything that was recovered --

11 A. I did not.

12 Q. -- pursuant to that?

13 A. Un-un -- well, recovered later from the vehicle
14 obviously.

15 Q. That evening.

16 A. That evening, no, I did not.

17 Q. Just so I'm clear, you do participate in some kind of
18 search or seizure afterwards?

19 A. Subsequent search, the consensual search of the vehicle.

20 Q. And were there items seized pursuant to the consent
21 search?

22 A. Yes.

23 Q. That were not seized on the -- in the early morning
24 hours of September 26th?

25 A. Yes, there were.

1 Q. The phones had been seized on the night of the 25th and
2 the early morning hours of the 26th?

3 A. That's correct.

4 Q. And items recovered in the rear of the TrailBlazer had
5 been seized on the night of the 25th into the early morning
6 hours of the 26th; is that correct?

7 A. That's also correct.

8 Q. The vehicle that -- this TrailBlazer that we have been
9 talking about that you subsequently learned was owned by
10 Mr. Arthur's friend, somebody he was connected to, did you
11 have any information regarding that TrailBlazer before?

12 A. Before that night?

13 Q. Yeah?

14 A. No, I did not.

15 Q. You didn't have any information before that time that
16 that wasn't or was a vehicle that Mr. Arthur had been
17 previously associated with and had -- in fact, that license
18 plate had been connected with him previously?

19 A. I did not have any of that information.

20 Q. You had that information regarding other people at the
21 club that night?

22 A. I did.

23 Q. Yeah. In fact, I mean, you knew that when other
24 vehicles arrived and you had their license plates, you knew
25 who those vehicles were going to be connected to and

1 associated with; is that fair?

2 A. We had information on particular vehicles that might
3 arrive that night.

4 Q. Was this TrailBlazer one of those vehicles that you were
5 on the lookout for that night?

6 A. No, it was not.

7 Q. You indicated that the reason this evening was of
8 interest was because of information that you had received
9 regarding this memorial for Devon McClure that was going to
10 be held there; is that correct?

11 A. That's right.

12 Q. Prior to that evening, had you personally seen any
13 social media announcements for this memorial?

14 A. Yes, I saw that social media announcement.

15 Q. When did you first become aware of the social media
16 posts that were announcing this event for Devon McClure?

17 A. I couldn't tell you the exact date and time I became
18 aware of it.

19 Q. Would --

20 A. My guess, again, at least a week because it took some
21 time to prepare for this event.

22 Q. Well, that's my question. Does -- I believe the date of
23 September 16th or so ring a bell? I thought I saw that
24 somewhere in one of your affidavits.

25 In any event, a week or ten days, sometime before

1 this?

2 A. Sure.

3 Q. Okay. You became aware that there was this memorial
4 planned?

5 A. Yes, I did.

6 Q. And so in the week to ten days or so prior to the event
7 there was, in fact, some planning that went on?

8 A. Oh, yes.

9 Q. In terms of trying to compile as much information about
10 people who might attend?

11 A. Yes.

12 Q. Any information regarding what vehicles they might be
13 arriving in?

14 A. Yes.

15 Q. And especially in terms of the people you were
16 targeting, you were looking for that type of information?

17 A. Yes, I was.

18 Q. And this information that you compiled in advance of the
19 memorial, in preparation for the memorial, you documented it
20 where?

21 A. In our operations plan.

22 Q. I'm sorry. In your --

23 A. Operations plan.

24 Q. In your operations plan. That's something that is
25 memorialized somewhere?

1 A. Yes.

2 Q. And that's information that you have shared with the
3 prosecution?

4 A. I believe I have.

5 Q. Okay. You don't have anything yourself --

6 A. I didn't bring --

7 Q. -- that documents that?

8 A. I didn't bring it today. Sorry.

9 Q. You didn't bring it today, but everything you do have
10 you have turned over to the prosecution?

11 A. I believe I have.

12 MS. MANNARINO: All right. Thank you.

13 THE COURT: All right. My redirect?

14 REDIRECT EXAMINATION

15 BY MR. GRAVELINE:

16 Q. Agent Ruiz, there was a lot of talk about the
17 information you had when the license plate was called in?

18 A. Right.

19 Q. All right. And did you actually get a physical printout
20 of the LEIN reporting this car as stolen that night?

21 A. I don't believe so.

22 Q. All right. And so where were you physically that night?

23 A. I was on static surveillance right next to our command
24 post.

25 Q. So were you on Michigan Avenue in Detroit?

1 A. I was.

2 Q. Outside of the Crazy Horse?

3 A. I was.

4 Q. All right. And where was the person who was -- you
5 called in the license plate to?

6 A. Just a room over, two rooms over maybe.

7 Q. So did they actually bring you a physical copy of the
8 LEIN report or did they tell you the information they found?

9 A. All of the communication was over the radio that
10 evening. We would call out a plate, Michigan plate this,
11 Ohio plate that, they would relay the information once they
12 had determined the information associated with that plate.

13 Q. All right. So in terms of -- when we are talking about
14 printouts, you didn't have a physical printout that night?

15 A. No, sir.

16 Q. The information that you had received was this car had
17 been reported stolen?

18 A. That's correct.

19 Q. With this Ohio license plate?

20 A. That's correct.

21 Q. Let's talk about the 302. Now, this is not your 302
22 personally, correct?

23 A. I did not write this. It was Jeffery Wittfield that
24 wrote this.

25 Q. And is Jeffery Wittfield an FBI agent at that point that

1 was part of the Violent Gang Task Force?

2 A. Yes.

3 Q. And so the annotations that he made, that is based upon
4 what he observed or what was called out to him?

5 A. That's correct.

6 Q. And in terms of the last page where it talked about the
7 license plate with the TrailBlazer?

8 A. Okay.

9 Q. Specifically, the 302 reports a license plate of G -- or
10 Golf Juliette Hotel 1851, correct?

11 A. That's correct.

12 Q. Does it annotate a state next to it in the 302?

13 A. It does not.

14 Q. And so could it be possible that Agent Wittfield ran it
15 as a Michigan plate as opposed to an Ohio plate?

16 MS. MANNARINO: Object to speculation, Judge.

17 MR. GRAVELINE: I'm just saying it is possible.

18 THE COURT: I will permit the question.

19 A. It is a possibility.

20 BY MR. GRAVELINE:

21 Q. And the other plates that are reflected on that 302 that
22 were ran that day, are there any other states other than
23 Michigan plates reflected?

24 A. I -- excuse me. I see one here that says Pennsylvania
25 plate.

1 Q. All right. And then are the others all Michigan plates?

2 A. It doesn't even specify Michigan.

3 Q. So the other ones are just plate numbers just like the
4 annotation for this Golf Juliette Hotel 1851?

5 A. That's correct.

6 Q. The information you had about the Ohio plate of Golf
7 Juliette Hotel 1851 that was there was a stolen car that
8 night?

9 A. That's correct.

10 Q. And that's what you called out to your fellow officers?

11 A. That's correct.

12 Q. Now, in the preparation for this particular motion
13 hearing, did I ask you to get an actual physical printout of
14 the LEIN report?

15 A. You did.

16 Q. Have we -- and then you gave that to me, correct?

17 A. I did.

18 Q. And based upon your knowledge, was that at the request
19 of the defense in this case?

20 A. I believe it was.

21 Q. And so you had this printed off in the last week?

22 A. Yes.

23 MR. GRAVELINE: Your Honor, I'm sorry, I didn't
24 bring any government exhibit stickers but I'm going to label
25 this as Government's Exhibit 4.

1 THE COURT: Okay.

2 A. I have a copy.

3 BY MR. GRAVELINE:

4 Q. You have a copy of it right there?

5 A. Yes, I do.

6 Q. So I'm going to hand this to the Court. I think this
7 might call for a little bit of deciphering here.

8 A. Okay.

9 Q. Do you see what date it was reported stolen on?

10 A. It says the date of entry is September 7th, 2015.

11 Q. Where do you see that on this particular piece of paper?

12 A. There is a designation, I don't know, the tenth line
13 down in the actual detail of this VIN that's being searched;
14 it says DTE, which I'm told that stands for date of entry.

15 Q. All right. So when you say ten lines down that's from
16 where it says purged?

17 A. Correct.

18 Q. You count ten lines down from there on the line that
19 states with NIC, correct?

20 A. Correct.

21 Q. And then that's the date of entry for this particular
22 vehicle?

23 A. That's right.

24 Q. And do you see three lines up from that on the line that
25 states MIS, the first one?

1 A. Yes.

2 Q. And do you see after the back slash UDAA?

3 A. Yes.

4 Q. Do you know what that acronym stands for?

5 A. Unlawful driving away auto I think.

6 Q. Is that a Detroit police acronym?

7 A. Yes.

8 Q. And then does it say what date it was recovered on or
9 returned to owner?

10 A. On that same line of the date of entry, farther to the
11 right, there is a designation DLU, and I was told that stands
12 for date of last update, and that particular date is
13 October 7th, 2015.

14 Q. All right. And that corresponds with the -- after the
15 consent search of October 5th, 2015?

16 A. That's correct.

17 Q. And is there any annotation when this VIN number is run
18 that anyone had taken this vehicle out of its designation as
19 a stolen vehicle before October 7, 2015?

20 A. No.

21 Q. Now, in terms of the overall plan for that evening, once
22 you determined that this Chevy TrailBlazer was a stolen
23 vehicle, did it matter who got in that vehicle upon leaving
24 that night whether it was going to be stopped?

25 A. It did not.

1 Q. So it did not matter that Mr. Arnold was in that vehicle
2 that night in your mind whether it was going to be stopped?

3 A. That's correct.

4 Q. Did it matter that Steve Arthur was going to be the
5 driver that night?

6 A. It did not.

7 Q. So the information that you had, this was a stolen
8 vehicle and a traffic stop was going to be done on that
9 vehicle that night?

10 A. That's right.

11 Q. And going back to the actual information that you had
12 leading up to this, Ms. Mannarino talked about trying to
13 accumulate as much information as you could have prior to
14 this event. And this event was once again called what on
15 social media?

16 A. The block party.

17 Q. How much -- how many cars had you identified at that
18 point as belonging to a Seven Mile Bloods member or you knew
19 to be on the lookout for that night?

20 A. Not many. I couldn't give you an exact number but not
21 many. Knowledge that we had was a lot of these guys used
22 rental vehicles and were always changing them up, so as far
23 as having a specific vehicle for all of our guys we just
24 didn't have it.

25 Q. The owner of this vehicle was a Tesha Robinson; is that

1 correct?

2 A. Yes, that's correct.

3 Q. Had you ever heard her name prior to that night?

4 A. Never.

5 Q. Did you know that Tesha Robinson was somehow connected
6 with Steve Arthur prior to that night?

7 A. No.

8 Q. So the information you had is that this vehicle was a
9 stolen vehicle with no connection to any of the participants
10 who you knew to be a Seven Mile Bloods member or expected to
11 be a Seven Mile Bloods member?

12 A. That's correct.

13 MR. GRAVELINE: Thank you. No further questions.

14 MS. MANNARINO: If I might just follow up?

15 THE COURT: Okay. A couple questions.

16 MS. MANNARINO: Just a couple of questions.

17 RECROSS-EXAMINATION

18 BY MS. MANNARINO:

19 Q. So if I get this straight, you did run a paper LEIN,
20 correct?

21 A. Yes.

22 Q. And that was at my request?

23 A. Correct.

24 Q. Okay. And so the LEIN you ran was 8/29, correct? Lower
25 right-hand corner, report date.

1 A. Yes, I see that now.

2 Q. This being 8/31, right?

3 A. Right.

4 Q. So you run a LEIN and you see that, in fact, the vehicle
5 had been reported stolen on the 6th of September, right?

6 A. It actually shows the 7th here.

7 Q. Well, did you ever actually go and look at the police
8 reports that had originally been filed by the owner of the
9 car?

10 A. Yes, I did.

11 Q. There were police reports that were filed --

12 A. Yes.

13 Q. -- reporting it stolen?

14 A. Yes, I have a copy of it here.

15 Q. Was that on the 6th?

16 A. That was September 6th.

17 Q. So it goes into the LEIN on the 7th?

18 A. Right.

19 Q. Okay. And so you subsequently learned that, in fact,
20 the vehicle had been recovered, right, by the owner?

21 On the night that Mr. Arthur is seen driving this
22 vehicle he had that vehicle with permission of the owner of
23 the vehicle, right? On that night it wasn't a stolen
24 vehicle?

25 A. That was not knowledge that I had that night.

1 Q. But you subsequently learned that because you had
2 contact with the owner of vehicle?

3 A. Right.

4 Q. And the owner of the vehicle told you that the vehicle
5 had been recovered, right?

6 A. Yep.

7 Q. So if it was still in the LEIN that was because it was
8 an error, it should have been removed from the LEIN, right?

9 A. It should have.

10 Q. Right. And no one took it out?

11 A. I don't believe so.

12 MS. MANNARINO: Thank you.

13 THE COURT: All right. Thank you. You may step
14 down.

15 (Witness excused at 10:19 a.m.)

16 MR. GRAVELINE: The government calls Officer
17 Nick Dedeluk to the stand.

18 THE COURT: Good morning.

19 OFFICER DEDELUK: Good morning.

20 THE COURT: Would you raise your right hand, sir?

21 Do you swear the testimony you are about to give in
22 this cause will be the truth, the whole truth, and nothing
23 but the truth, so help you God?

24 OFFICER DEDELUK: Yes.

25 THE COURT: All right. Take a seat please. We

1 will have you begin by stating your name and spelling your
2 last name for us.

3 OFFICER DEDELUK: Nicholas Dedeluk, D-E-D-E-L-U-K.

4 THE COURT: All right. Thank you. You may
5 proceed.

6 OFFICER NICHOLAS DEDELUK,
7 called at about 10:19 a.m., was examined and testified on his
8 oath as follows:

9 DIRECT EXAMINATION

10 BY MR. GRAVELINE:

11 Q. Who do you work for?

12 A. Detroit Police Department.

13 Q. And how long have you worked with the Detroit Police
14 Department?

15 A. Approximately nine years.

16 Q. And were you on duty on the night of September 25th --
17 night of September 25th, 2015 going into the early morning
18 hours of September 26th, 2015?

19 A. Yes.

20 Q. And what were your duties that night?

21 A. That night we were working with VCTF on detail up at the
22 Crazy Horse strip club on Michigan Avenue.

23 Q. And what were you -- what were your duties in terms of
24 working with the FBI that night?

25 A. Basically a takedown unit.

1 Q. All right. And describe that for the Court. So what
2 did you understand your duties to be that night?

3 A. That night we were staged away from the club in a fully
4 marked car, full uniform, and VCTF and other units that were
5 up at the club would relay us information on vehicles that
6 they may want -- need to be stopped or people they wanted to
7 be investigated.

8 Q. All right. And was your patrol car -- were you in a
9 fully marked scout car that night?

10 A. Yes.

11 Q. And did that have video capability?

12 A. Yes, it did.

13 Q. Have you reviewed what has been marked as Government's
14 Exhibit 1 in this case, the video from your scout car from
15 that night?

16 A. Yes, I have.

17 Q. Is that an accurate video taken from your scout car that
18 night?

19 A. Yes, it is.

20 Q. Specifically, were you radioed information about a
21 particular Chevy TrailBlazer?

22 A. Yes, I was.

23 Q. And what information was passed along to you?

24 A. That a blue Chevy TrailBlazer with an Ohio plate was
25 reported -- confirmed stolen vehicle was at the club.

1 Q. And were you asked to stop that vehicle?

2 A. When it left they -- they had us positioned west of the
3 club since that's the way the vehicle was faced, and
4 basically told us they would advise us when that vehicle
5 would leave, and we were to effect a traffic stop on that
6 vehicle.

7 Q. Were you told who were some of the occupants of the
8 vehicle at that point?

9 A. No, I don't believe so.

10 Q. All right. And did you, in fact, attempt to traffic
11 stop that vehicle?

12 A. Yes, I did.

13 Q. Do you remember the exact time that you tried to stop
14 that vehicle that night?

15 A. No, I do not.

16 Q. Did you bring your report with you today?

17 A. Yes, I did.

18 Q. And if you take a look at your report would that refresh
19 your memory as to what time a traffic stop was attempted
20 effectuated that night?

21 A. It may.

22 Q. Okay. Can you take a look at that?

23 A. Yes. I believe it was around 4:00 in the morning.

24 Q. Well, let me -- is it reflected in your report there, an
25 exact time of the traffic stop, not of the entire incident?

1 A. No, it is not.

2 Q. Okay. Who was your partner there that night?

3 A. Officer Johnnie Hanna.

4 Q. And to be clear, when there are -- there is an incident,
5 is it common that both officers would write a report --

6 A. Yes.

7 Q. -- and log?

8 And is it a Detroit police system known as Crisnet
9 system?

10 A. It was, yes.

11 Q. So Crisnet is C-R-I-S-N-E-T, correct?

12 A. Yes.

13 Q. And in terms of knowing where one report is associated
14 with a case, there is a case number and then it is called a
15 .1 or a .2, .3, correct?

16 A. Correct.

17 Q. What number is yours -- what is the case number and
18 what's your report numbered as?

19 A. The case number is 1509070072, and .2 is my report.

20 Q. .2 is your report. I'm going to show you .3, okay, and
21 ask if you recognize who wrote that report.

22 A. This report is written by my partner, Johnnie Hanna.

23 Q. I would like you to read his description of the evening,
24 just read it to yourself and look up once you are done
25 reading. All right.

1 Does his report reflect the time that the traffic
2 stop was initiated?

3 A. Yes.

4 Q. And what time was the traffic stop initiated?

5 A. 1:57 a.m.

6 Q. And where specifically was the traffic stop initiated?

7 A. Lonyo, eastbound 94.

8 Q. And --

9 A. I should say on 94 and Lonyo.

10 Q. So are we talking about the entrance ramp or --

11 A. Actually on the freeway.

12 Q. On the freeway. And how did you attempt to establish
13 this traffic stop?

14 A. I pulled behind the vehicle and activated my lights and
15 siren.

16 Q. And did the vehicle comply with the lights and siren?

17 A. No.

18 Q. The Court has the video, but can you describe what you
19 remember of that particular attempted traffic stop?

20 A. Do you want me to go all the way to the end?

21 Q. Yes.

22 A. Okay. We were given the description of the vehicle,
23 advised that it was getting on -- it was on Michigan
24 westbound to northbound Lonyo to eastbound 94. We were on
25 Trenton Street just south of Michigan, which is west of

1 Lonyo. We got on Michigan, got on the eastbound ramp of 94,
2 got on 94, observed the vehicle being described on 94 heading
3 eastbound. I pulled behind the vehicle, activated my lights
4 and sirens. The vehicle disregarded the lights and sirens,
5 and took off at a high rate of speed on eastbound 94.

6 Q. Now, when you say high rate of speed, do you remember
7 how fast you were going to keep up with that vehicle?

8 A. In excess of 100 miles an hour.

9 Q. What is the speed limit on I-94 there in the city?

10 A. 55.

11 Q. And were you able to keep up with the vehicle as you
12 were going over 100 miles an hour?

13 A. I was. I had to back off several times because there
14 was traffic coming.

15 Q. And why did you want to back off with the traffic?

16 A. In case I had to make a sudden stop or maneuver in case
17 the suspect wrecked.

18 Q. All right. And were you able to keep up with the
19 vehicle?

20 A. Yes.

21 Q. And did you eventually see it come to a stop?

22 A. Yes, I did.

23 Q. How did it come to a stop?

24 A. The vehicle was heading eastbound on 94 and entered the
25 southbound ramp to I-75, while it was making the -- so it was

1 a sweeping right turn to get on southbound 75, and it went
2 up -- it couldn't make the turn, it went up the embankment,
3 came back down on the ramp, and both driver's front and rear
4 tires were blown out, and the driver of the vehicle fled on
5 foot westbound up to the embankment.

6 Q. And did you chase after him?

7 A. No, I did not.

8 Q. All right. What did you do?

9 A. I noticed that there was a passenger in the vehicle, and
10 I approached the passenger side of the vehicle, ordered the
11 passenger to open the door, which he eventually did, and I
12 detained the passenger.

13 Q. All right. So once again, referring back to the video,
14 you are the officer with the gun drawn at the side door of
15 the vehicle that night?

16 A. Yes, I am.

17 Q. Okay. Now you say that you detained the passenger. Did
18 you put him on the ground?

19 A. Yes -- well I assisted him to the ground.

20 Q. All right. And did you put some type of restraint on
21 his hands?

22 A. Yes, I did.

23 Q. What type of restraints did you put on his hands?

24 A. Handcuffs.

25 Q. And now at this point what was your plan or what was

1 your procedure going to be for processing this individual
2 that night?

3 A. He was going to be arrested.

4 Q. And why was that?

5 A. Fleeing -- a stolen vehicle, and then fleeing and
6 eluding.

7 Q. And so you put him in handcuffs?

8 A. That is correct.

9 Q. And then what did you do with him from there?

10 A. I took him to the back of the scout car.

11 Q. And also it appears on the video that you might have
12 patted him down?

13 A. Yes, I'm sorry. Yes, I did, I did a pat down for
14 weapons.

15 Q. And did you find any weapons on his person?

16 A. Not on his person, no.

17 Q. And then you brought him back to the scout car?

18 A. That is correct.

19 Q. Did you participate at all in the rest of the search of
20 the vehicle that night?

21 A. Not of the vehicle.

22 Q. Now, just taking a step back outside of this particular
23 incident right here, if you had -- just as a Detroit police
24 officer, if you have information about a stolen vehicle and
25 there are more than one person in that vehicle, what are your

1 procedures when you eventually pull over that vehicle?

2 A. Arrest all occupants of the vehicle.

3 Q. And bring them where?

4 A. To the Detroit Detention Center.

5 Q. And is that pending further investigation?

6 A. Yes.

7 Q. So regardless in terms of investigating the stolen car,
8 the occupants were going to be arrested that night pending
9 that investigation?

10 A. That is correct.

11 Q. Now, I just want to ask one other thing about the
12 Crisnet. You mentioned that the case number in this case was
13 1509070072, correct?

14 A. Correct.

15 Q. What was the initial -- I'm going to hand you -- and
16 yours was the .2, correct?

17 A. That's correct.

18 Q. If you take a look at the top of your report, on the
19 left-hand side it says occurred on September 6th, 2015 at
20 11:15 p.m.?

21 A. That's correct.

22 Q. But that's not September 26th, 2015?

23 A. No.

24 Q. Why is September 6th, 2015 reflected on that report?

25 A. When a vehicle is stolen in the City of Detroit an

1 initial report is generated. If there is an arrest or
2 anything involving that vehicle later on, recovery of the
3 vehicle, it is a dot off of the initial report so they linked
4 together so that there's not separate reports.

5 Q. Okay. So your report is then forever linked back to the
6 initial stolen car report?

7 A. That is correct.

8 Q. I'm going to show you the .1 in this case. What was the
9 date that this car was reported stolen on?

10 A. It was reported on September 7, 2015.

11 Q. All right. And the date entered into the Crisnet
12 system?

13 A. The date entered was September 7, 2015.

14 MR. GRAVELINE: Thank you. No further questions.

15 THE COURT: Thanks, Mr. Graveline.

16 Ms. Mannarino?

17 CROSS-EXAMINATION

18 BY MS. MANNARINO:

19 Q. Good morning.

20 A. Good morning.

21 Q. You were on duty that evening with a partner, correct?

22 A. That is correct.

23 Q. And that would be Hanna?

24 A. Yes.

25 Q. Okay. And you two were called into -- called in as a

1 takedown unit?

2 A. Correct.

3 Q. Okay. You were there to provide backup and to arrest
4 people, correct?

5 A. Possibly, correct.

6 Q. And so you arrived at that location what time?

7 A. Oh, I'm going -- it was early. We were there for quite
8 awhile. I can't give you an exact, we were probably there
9 four or five hours --

10 Q. Okay.

11 A. -- if not longer.

12 Q. So you just took a look at your report, and you don't
13 have that in front of you anymore?

14 A. I do have my report in front of me.

15 Q. Does the report indicate 11:00-ish p.m., does that sound
16 about right?

17 A. If I could refer --

18 Q. No, I'm looking at the wrong report. Tell me what time
19 did you get there?

20 A. Probably around 10:00, 10:30 maybe.

21 Q. And you are nearby, you are not at the Crazy Horse,
22 right?

23 A. That is correct.

24 Q. From your location are you static, were you stationary
25 somewhere?

1 A. Yes, yes.

2 Q. And you were there for a number of hours in that one
3 location, right?

4 A. That is correct.

5 Q. And in that one location you were at could you see the
6 Crazy Horse?

7 A. No.

8 Q. All right. So everything that you are getting, you are
9 getting via the radio?

10 A. Yes.

11 Q. Okay. So people are giving you information but you
12 can't really see what is going on, right?

13 A. Correct.

14 Q. You get some information regarding the TrailBlazer, you
15 don't see this TrailBlazer, right?

16 A. No, no.

17 Q. You don't see who is in the TrailBlazer getting in,
18 getting out, right?

19 A. No, I did not.

20 Q. Did you get information about what time that TrailBlazer
21 got there?

22 A. I do remember them calling out -- what they were doing
23 is they were running plates, someone was running them through
24 the LEIN.

25 Q. Sure.

1 A. And I do remember hearing about that TrailBlazer pulling
2 up to the location, the plate being ran, and being confirmed
3 stolen. What time that was I couldn't tell you.

4 Q. What about any information about who was in the vehicle?

5 A. I don't recall.

6 Q. Okay. Did you have -- did you get information that
7 there were certain people being targeted that night?

8 A. Yes, I did.

9 Q. Did you get any information that one of the people that
10 they were targeting that night was going to be in the
11 TrailBlazer?

12 A. No.

13 Q. You are there for a number of hours and you finally get
14 some information that the TrailBlazer is on the move, right?

15 A. Correct.

16 Q. And so you have some information on the plate of this
17 TrailBlazer?

18 A. That's correct.

19 Q. And the information -- did you have the plate number?

20 A. Yes, I did.

21 Q. Okay. You got information that it was an Ohio plate; is
22 that correct?

23 A. Correct.

24 Q. That's -- you wrote that in your report, right?

25 A. Yes, ma'am.

1 Q. It is an Ohio plate, that's the information you got, and
2 you had the number -- or the letters GJH 1851?

3 A. I believe that's right. If I could look at the report
4 real quick?

5 Q. Sure, if that would refresh your recollection.

6 A. What plate did you say?

7 Q. Ohio -- did you have information that it was a blue 2002
8 Chevy TrailBlazer, Ohio plate GJH 1851?

9 A. Yes, that is correct.

10 Q. Okay. But this is information that you got over the
11 radio, you are not actually putting eyes on it?

12 A. Not at that time, no.

13 Q. And you are not doing anything with that information;
14 you are not in your scout car running the plate yourself?

15 A. I don't know if we did or not, to be honest. We might
16 have earlier in the day but not at that time, no, not when it
17 was on the move, but when they called it out earlier we may
18 have ran it. I don't remember if we did or not.

19 Q. Okay. You do know if you did, but in your report you
20 are indicating that you are operating on the information that
21 you got from the people talking over the radio?

22 A. Correct.

23 Q. You may have run it yourself, you could have run it
24 yourself, right?

25 A. Right.

1 Q. Because you have those capabilities in the vehicle?

2 A. That is correct.

3 Q. But you don't know if you did or not?

4 A. I don't recall.

5 Q. You don't recall?

6 A. No.

7 Q. So -- and when you get this information that the
8 TrailBlazer was on the move, you don't know what time it was;
9 is that fair?

10 A. According to my partner's report it was just prior to
11 1:57 a.m.

12 Q. Okay. Because 1:57 is what was noted as the time that
13 you attempted the stop?

14 A. That's correct.

15 Q. But you got the information before that?

16 A. Correct.

17 Q. Okay. So sometime before 1:57 you got the information
18 the TrailBlazer is on the move?

19 A. Literally minutes, not even, less than two minutes
20 probably.

21 Q. Sure. That's fine. Because you get this information,
22 and then you have to put yourself in position to get to the
23 TrailBlazer?

24 A. I was already in position, I just had to get to the
25 TrailBlazer.

1 Q. You had to get to the TrailBlazer because you weren't in
2 a position to see the TrailBlazer?

3 A. No, I could not see it.

4 Q. So you get the information and you go and put yourself
5 in a position to see the TrailBlazer?

6 A. Correct.

7 Q. And the first time you see the TrailBlazer is on 94
8 because that's when you attempt the stop it; is that fair?

9 A. Yes.

10 Q. So you travel -- you get the information and then you
11 travel from a location near the Crazy Horse, right, on
12 Michigan Avenue?

13 A. Right, yes.

14 Q. Down Michigan Avenue, right, pass Lonyo, right?

15 A. No.

16 Q. Well, to --

17 A. I was just west of Lonyo on Trenton, which isn't that
18 far.

19 Q. Sure.

20 A. I went northbound on Trenton to Michigan, eastbound on
21 Michigan to west -- to northbound 94 -- or northbound Lonyo,
22 and then onto the freeway. So I didn't pass Lonyo, I was
23 only a few blocks away.

24 Q. So you then get on the freeway?

25 A. Correct.

1 Q. And you are on the freeway --

2 A. Correct.

3 Q. -- when you then catch up with the TrailBlazer?

4 A. Correct.

5 Q. All right. And that takes, you said, at least a couple
6 minutes?

7 A. No, no, it didn't take -- when they told -- it was less
8 than a minute. From the time they told me it was moving to
9 the time I got behind it had to be less than a minute.

10 Q. Okay. And so you get behind the TrailBlazer?

11 A. Correct.

12 Q. And you try to stop it, right?

13 A. Right.

14 Q. Can you see who is in that TrailBlazer?

15 A. No, I cannot.

16 Q. Can you tell if there are people in the TrailBlazer?

17 A. Yes.

18 Q. You can tell there are people in there?

19 A. Yes. And I believe we were advised that it was occupied
20 by two black males over the radio before we made the stop.

21 Q. Okay. But you couldn't see them?

22 A. No, I could not.

23 Q. Did you have information about their positions in the
24 vehicle; is one driving and one in the back seat or both --

25 A. No, I don't remember. I believe they said two people

1 got in the vehicle.

2 Q. Okay. And when you finally stop the vehicle there are
3 two people in the vehicle?

4 A. Correct.

5 Q. Well, one got out and ran?

6 A. Yes.

7 Q. So then there was a front-seat passenger?

8 A. Correct.

9 Q. Okay. And that front-seat passenger you've identified
10 as Mr. Arnold, right?

11 A. I haven't yet but he's sitting right there in the red.

12 Q. Oh, let's do that. So the -- because at the time you
13 didn't have a description of the people, right?

14 A. In the vehicle or are you talking about --

15 Q. In the vehicle.

16 A. No, I didn't.

17 Q. You know, Officer Dedeluk --

18 A. Dedeluk.

19 Q. -- you didn't get information saying hey, front-seat
20 passenger is one of the targets of this, you know, he's a
21 really bad guy, be careful, he may be armed?

22 A. Well, we figured that with all the people that were
23 leaving the club that night, that's why we were doing this
24 detail.

25 Q. But you didn't have information that there was this huge

1 party, there was five people being targeted, and the person
2 you are following is one of those people we are targeting?

3 A. No, I don't believe so.

4 Q. You go up to the passenger --

5 A. Correct.

6 Q. -- and you ask him to exit the vehicle?

7 A. Correct.

8 Q. He does?

9 A. Yes.

10 Q. And in all manner, shape, and form, according to the
11 video, cooperative?

12 A. Correct.

13 Q. But your instructions were -- or your intent was I --
14 you were going to arrest everybody in that vehicle?

15 A. Yes, that's what we do.

16 Q. That's what you do?

17 A. That is correct.

18 Q. Because -- because you arrest everybody in the vehicle,
19 whether or not there is anything that you can objectively see
20 that connects them to the vehicle?

21 A. On a case like that, yes.

22 Q. I mean, well -- strike that.

23 And do you now personally search the vehicle?

24 A. No.

25 Q. Do you see the vehicle being searched?

1 A. Yes.

2 Q. Who is conducting that search?

3 A. Sergeant Schrameck and my partner, Johnnie Hanna.

4 Q. Okay. So at the time the vehicle was searched, you have
5 Mr. Arnold under arrest and he's -- has he already been
6 placed in the scout car at the time?

7 A. He's in the back seat of the scout car, yes, ma'am.

8 Q. Do you see items recovered from the vehicle?

9 A. Yes, I do.

10 Q. Okay. Do you -- prior to the search by the sergeant,
11 had you looked in the vehicle and seen anything?

12 A. All I was looking for was people.

13 Q. Sure.

14 A. I just observed Mr. Arnold, I seen him, I took a quick
15 peek through the back window to make sure there was no other
16 passengers in the vehicle, and that's all I did was for
17 people.

18 Q. Sure. And you -- did you see anything of note as you
19 peeked in the windows?

20 A. No, I didn't see any people. I didn't look for anything
21 else.

22 Q. If you had seen something else, I mean --

23 A. I didn't, at that time I didn't see, no.

24 MS. MANNARINO: All right. Thank you.

25 THE COURT: Thanks.

1 MR. GRAVELINE: Nothing further, Your Honor.

2 THE COURT: All right, sir. You may step down.

3 (Witness excused at 10:43 a.m.)

4 MR. GRAVELINE: United States calls Detroit Police
5 Sergeant Craig Schrameck, Your Honor.

6 THE COURT: Good morning.

7 SERGEANT SCHRAMECK: Good morning, sir.

8 THE COURT: Would you please raise your right hand?

9 Do you swear that the testimony you are about to
10 give in this cause will be the truth, the whole truth, and
11 nothing but the truth, so help you God?

12 SERGEANT SCHRAMECK: I do.

13 THE COURT: All right. Thanks. Take a seat. We
14 will have you begin by stating your name and spelling your
15 last name for us.

16 SERGEANT SCHRAMECK: Craig Schrameck,
17 S-C-H-R-A-M-E-C-K.

18 SERGEANT CRAIG SCHRAMECK,
19 called at about 10:44 a.m., was examined and testified on his
20 oath as follows:

21 DIRECT EXAMINATION

22 BY MR. GRAVELINE:

23 Q. I just want to make sure I got it right. Schrameck?

24 A. Schrameck.

25 Q. And who do you work for?

1 A. City of Detroit Police Department.

2 Q. How long have you worked with the City of Detroit?

3 A. Approximately 20 years.

4 Q. And what is your current rank?

5 A. Sergeant.

6 Q. Were you on duty on September 25th, going into the early
7 morning hours of September 26th, 2015?

8 A. Yes.

9 Q. And what were your duties -- well, first of all, what
10 were you doing that night?

11 A. I was a sergeant at the time in charge of the Tactical
12 Response Unit. We were on a stakeout operating as a takedown
13 unit for the Violent Crimes Task Force and I think a joint
14 task force with the FBI.

15 Q. Where was the location that was being surveilled that
16 night?

17 A. It was around the area of Michigan, Wyoming, Lonyo,
18 basically the Crazy Horse strip bar was the target location.

19 Q. And at some point did you participate in the traffic
20 stop of a 2002 Chevy TrailBlazer that night?

21 A. Yes.

22 Q. And we just heard from Officer Dedeluk. Were you in his
23 car that night?

24 A. No, I was not. I was in a -- I was by myself in our
25 supervisor car, so I was probably -- I think it was -- he was

1 the lead vehicle, I think there was a couple MSP cars, and
2 then I was behind that one because we had two other chases
3 going on at the same time I was monitoring.

4 Q. All right. And so did you pull up to the scene --

5 A. Yes.

6 Q. -- of that traffic stop?

7 A. Yes.

8 Q. And did you observe the condition of the vehicle that
9 night -- at that time?

10 A. Yes.

11 Q. Can you describe the condition of the vehicle that
12 night?

13 A. It kind of drove up onto the embankment, it was kind of
14 on its side, on the southbound ramp to 75, the interior was
15 kind of in disarray. I believe there was some dents on it
16 and stuff like that.

17 Q. How about the tires?

18 A. I believe it had a flat tire, one of them.

19 Q. And so when you arrive at the scene -- have you observed
20 the video from Officer Dedeluk's vehicle?

21 A. Yes.

22 Q. And that has been submitted to the Court as Government's
23 Exhibit 1. Are you shown in that video?

24 A. Yes.

25 Q. What were you doing when you arrived at the scene?

1 A. The first part of it when I got there, I made sure
2 Officer Dedeluk was good, he had his subject down on the
3 ground. And then you could see me walking back and forth
4 talking on our radios because we still had two other chases
5 from the same location going on, so I was monitoring those.
6 Then I began to search the vehicle since Officer Dedeluk was
7 monitoring the subject he had in custody.

8 Q. Now, what was your understanding about why this
9 TrailBlazer was being traffic-stopped that night?

10 A. Well, it was one of the target vehicles from the
11 incident that we were briefed on, but also the vehicle is a
12 stolen vehicle, it was reported stolen, it was in LEIN as a
13 stolen vehicle.

14 Q. And when you started searching the vehicle, what were
15 you looking for?

16 A. When we first started, obviously the subject fled the
17 vehicle -- or the driver fled from the vehicle, so we were
18 looking for any type of weapons or anything like that that
19 with have caused him to flee, or documentation showing who
20 the actual owner was of the vehicle since it was a stolen
21 vehicle, and then once the two were placed in custody it
22 became a search incident to arrest prior to impounding the
23 vehicle.

24 Q. And then once you impound the vehicle at Detroit police,
25 do you -- does the Detroit police usually do an inventory

1 search of that vehicle?

2 A. We do an inventory search prior to having it towed.

3 Q. And what is the purpose of that inventory?

4 A. For any type of contraband like narcotics or weapons or
5 any illegal things that we would not want to go to the
6 tow yard, anything that could be hazardous, anything like
7 that.

8 Q. And so did you do such a search of the vehicle that
9 night?

10 A. Yes, I did.

11 Q. Did you lift the back tailgate of the TrailBlazer that
12 night?

13 A. Yes, I did.

14 Q. And what did you find there?

15 A. It was a loaded AR-15 assault rifle, it had one in the
16 chamber and I can't remember how many were in the magazine
17 off the top of my head.

18 Q. And so you are the one that actually recovered that
19 AR-15?

20 A. Yes, out of the vehicle, yes.

21 Q. And upon your search, did you also observe cell phones
22 within the vehicle as well?

23 A. There was cell phones inside the vehicle, yes, I can't
24 remember how many exactly, at least two that I remember I
25 think.

1 Q. Do you know if the car was, in fact, impounded that
2 night?

3 A. Yes, it was.

4 MR. GRAVELINE: Thank you. No further questions,
5 Your Honor.

6 THE COURT: Okay. Thank you. Ms. Mannarino?

7 CROSS-EXAMINATION

8 BY MS. MANNARINO:

9 Q. Where were you physically located that evening? Were
10 you in the vicinity in a static position waiting for further
11 instructions from the Violent Crimes Task Force?

12 A. Yeah, I was -- we had -- all of our units were
13 in that -- we were kind of offset of Michigan Avenue in the
14 neighborhood, kind of -- I guess it would be the southwest
15 area from where the strip bar was located.

16 Q. And, I'm sorry, I don't recall if you said, were you
17 with somebody or were you alone?

18 A. No, I was by myself in the vehicle.

19 Q. Okay. And when did you first get information about this
20 operation that night?

21 A. We had a briefing prior to deploying to the area.

22 Q. That evening?

23 A. I'm pretty sure it was that evening, yeah.

24 Q. You didn't have any information beforehand that this
25 plan had been in place for, you know, a week, ten days, a

1 couple weeks beforehand?

2 A. We had -- we had heard there was going to be an
3 operation but, I mean, as far as the specifics of the
4 operation we had a briefing that evening.

5 Q. Okay. But ahead of time you knew that, you know, that
6 night it was going to be all hands-on deck in this location?

7 A. I don't believe I actually knew until maybe a day before
8 that it was actually a go.

9 Q. Okay. So you go that evening and you are -- had you
10 been briefed about any specific targets?

11 A. I can't -- off the top of my head I can't remember what
12 all the targets were that were given out.

13 Q. But do you recall having some information about specific
14 targets?

15 A. Just that the UCs that were in the area were going to
16 call out targets as they arrived, and if any of the targets
17 left, the target vehicles they called out, we were
18 responsible for stopping and detaining and IDing subjects.

19 Q. Okay. You weren't responsible for actually, you know,
20 running any of these plates or getting any kind of
21 information?

22 A. No, myself, no.

23 Q. Okay. So you were going to be relying solely on the
24 information you got from the task force members?

25 A. Yes.

1 Q. And in terms of any specific information about specific
2 targets, do you recall whether you had any? I'm not talking
3 about plates numbers, I'm talking about individuals.

4 A. I don't remember if we had pictures or anything like
5 that. You talking like how sometimes we hand out the
6 pictures of subjects? I don't remember any of that.

7 Q. You know --

8 A. I think most of it was done, from my recollection, from
9 the command post by the UCs on scene.

10 Q. Okay. So whoever was there that night was going to be
11 targeted, was going to be --

12 A. I mean, not everybody that was at the bar, no.

13 Q. Okay. How many of your -- well, okay. Strike that.

14 Not everybody who was going to be at the bar
15 because not everybody who was going to be at that bar might
16 have been associated with what was going on there; is that
17 fair? Do you understand my question?

18 A. Right, that's what I'm saying, yeah.

19 Q. Sure.

20 A. Yeah.

21 Q. But how many of the DPD was out there in support of the
22 task force?

23 A. Honestly, I couldn't tell you the total number of
24 resources. I think that I probably had probably six of my
25 units and myself. I'm not sure what assets were there from

1 violent crimes or whatever other units were on the operation,
2 I'm not aware of that.

3 Q. All right. At some point you get some -- do you get
4 some information regarding this TrailBlazer?

5 A. Yes.

6 Q. And instructions to stop the vehicle?

7 A. That it was stolen.

8 Q. Okay. And the -- you respond to that request, correct?

9 A. Yes.

10 Q. In addition to other -- another unit; is that correct?

11 A. Officer Dedeluk and Officer Hanna were the primary unit,
12 they responded. There was basically at the time two other
13 vehicles that left at the same time that my other units
14 were -- ended up being in pursuit of also.

15 Q. Okay.

16 A. So I kind of was figuring out which one was the most
17 highest priority to go to.

18 Q. And you arrive at the scene of the stop of the
19 TrailBlazer?

20 A. Yes.

21 Q. After the unit with Dedeluk and Hanna --

22 A. They -- it was like -- like I stated before, I was
23 probably four or five cars back.

24 Q. Okay.

25 A. So I pulled up once they had already -- he had already

1 went up on the embankment and --

2 Q. All right. And Dedeluk has one of the occupants in
3 custody?

4 A. Yes, on the ground but at the passenger side.

5 Q. And is the -- and has the driver been brought back to
6 the scene by the time you get there?

7 A. When I first got there, no, he was not back yet.

8 Q. Okay. Do you assist in the pursuit or the arrest of the
9 driver, or what do you do when you first get there?

10 A. My immediate -- Officer Dedeluk's partner was on foot
11 with the MSP officers, so I immediately went to
12 Officer Dedeluk because he was by himself with the subject.

13 Q. Okay. So you don't -- you are not involved in the
14 pursuit or bringing back the other individual?

15 A. No.

16 Q. Okay. You immediately go to back up Dedeluk who already
17 has this individual in custody, right?

18 A. Yes.

19 Q. And that individual then is put in the scout car?

20 A. Yes.

21 Q. And what do you do then?

22 A. At that point -- well, we still have the other two
23 issues going on so I was monitoring those, and then at the
24 same time I started to search the interior of the vehicle.

25 Q. Okay. And while you are monitoring and, you know,

1 keeping an eye on everything, so the -- what is the first
2 thing you do when you search the vehicle?

3 A. The first thing I do is I look in the passenger side
4 first since the subject had came out of the passenger side, I
5 just checked that general area for any weapons or anything
6 like that.

7 Q. Did you see anything?

8 A. In the passenger side?

9 Q. Right.

10 A. Not in the passenger side.

11 Q. And the person who was already in custody, had they been
12 patted down?

13 A. I would imagine that Officer Dedeluk would have patted
14 him down.

15 Q. Do you know as a result of that pat down was anything
16 recovered?

17 A. I'm not aware if anything was recovered.

18 Q. Okay. So you go to the passenger compartment where you
19 are told the person who is in custody had been sitting,
20 right?

21 A. Uh-huh.

22 Q. You search that passenger?

23 A. Uh-huh.

24 Q. I'm sorry?

25 A. Yes. Sorry.

1 Q. So you search that area and you don't find anything of
2 note in that area?

3 A. Right.

4 Q. Okay. And then what do you do next?

5 A. I maintain in the same area because we were looking for
6 any type of identification that would have shown who the
7 ownership of the vehicle was like title, registration,
8 insurance, and that's usually located on the passenger side
9 in a glove box area or looking in the center console area.

10 Q. Do you find anything?

11 A. I don't remember finding anything. The whole inside was
12 kind of in disarray from rolling up on the thing and so there
13 was lot of stuff thrown around inside the car.

14 Q. Okay. So after searching the front passenger
15 compartment and the glove box or whatever else is accessible
16 to that area, what do you do next?

17 A. Move to the driver's side.

18 Q. And do you search that area?

19 A. Yes, ma'am.

20 Q. Do you find anything in that area?

21 A. No, ma'am.

22 Q. What do you do next?

23 A. We checked the -- like the back seat area, the hatchback
24 area.

25 Q. Okay. And just so I'm clear on what this vehicle looks

1 like, it is a TrailBlazer, which is some kind of SUV?

2 A. It is midsize smaller SUV.

3 Q. Okay. There is a front passenger compartment?

4 A. Uh-huh.

5 Q. Is there a rear passenger compartment?

6 A. There is -- like as in a back seat?

7 Q. Back seat.

8 A. Yes.

9 Q. Are there rear doors?

10 A. Yes.

11 Q. Okay. So you have to open up the rear doors to look
12 into the back seat area?

13 A. And you can see -- well, yeah, once you look into the
14 back seat area you can also see up front and towards the back
15 as well.

16 Q. And so you -- do you do that from the driver's side or
17 from the passenger's side?

18 A. I believe I do both actually.

19 Q. Okay. So you look in the -- in the area behind the
20 driver's seat?

21 A. Yes.

22 Q. Do you see anything of note back there?

23 A. No, I don't remember.

24 Q. Okay.

25 A. Or I don't recall seeing anything there.

1 Q. Did you go over to the passenger side?

2 A. I did.

3 Q. And do you look in the -- open up the door and look at
4 the passenger seat behind the front-seat passenger and do you
5 see anything of note?

6 A. No.

7 Q. You don't recover anything there?

8 A. No.

9 Q. What do you do next?

10 A. Go to the rear compartment.

11 Q. So there's a rear compartment even behind the back seat,
12 correct?

13 A. Yeah. I mean, it is not like -- yeah, there is, like
14 the back of the SUV.

15 Q. How do you access that area?

16 A. Well, you can access it from inside or you can access it
17 by lifting the tailgate.

18 Q. If you were to access it from the inside, how would you
19 do that?

20 A. I mean, you just reach back from -- I would -- I mean,
21 depending on your arm length you can reach it maybe from the
22 front but probably from the middle seats.

23 Q. Okay. So there is a passenger seat behind the front
24 compartment?

25 A. Yes.

1 Q. And from that passenger seat you can reach over the
2 back --

3 A. Yes.

4 Q. -- and reach into the back seat?

5 A. Yes.

6 Q. And that would require going over the back of the rear
7 passenger seat, right? I'm just trying to picture what this
8 looks like.

9 A. I mean, you can get to the back passenger seat from the
10 front, you can climb back into the back passenger seat from
11 the front seat, and then you can have access to the back
12 cargo area from either the back seat area.

13 Q. Okay.

14 A. So you could possibly climb into the back seat area -- I
15 guess, are you asking me if you can move from the front to
16 the back seat?

17 Q. No. I'm asking, you know, you to describe it. There is
18 a rear passenger seat?

19 A. Yes.

20 Q. And there is an area behind the rear passenger seat?

21 A. Yes.

22 Q. And it is humanly possible to get into the rear
23 compartment from that back seat --

24 A. Yes.

25 Q. -- for most people?

1 A. Yes.

2 Q. Okay. I am not getting over there, am I? I'm not
3 hopping over that back seat and getting in the rear portion.

4 A. I would say you probably could.

5 Q. On a good day, not happening.

6 So in order for you to access it what do you do?

7 A. I open the back tailgate.

8 Q. So you go to the rear of the vehicle and there's a
9 tailgate that you lift?

10 A. Yes.

11 Q. You did that?

12 A. Yes.

13 Q. Once you lift that tailgate you have access to that rear
14 compartment?

15 A. Yes.

16 Q. Do you find something in that rear compartment?

17 A. Yes.

18 Q. Okay. Are there other things back there too?

19 A. Yeah. There was some -- I believe there was like some
20 clothing maybe some other boxes or maybe -- but yes.

21 Q. Okay. And just so I'm clear, whatever you found in the
22 rear of that vehicle you found after you went to the back and
23 lifted the rear tailgate, right?

24 A. I recovered it out of the rear tailgate, yes.

25 Q. You didn't know it was back there until you went and

1 opened up that rear tailgate, did you?

2 A. I was told it may be back there but no one could --
3 somebody saw something in the side window and we were going
4 to the back tailgate anyway.

5 Q. Okay.

6 A. But I personally didn't see it until I opened the back
7 tailgate.

8 Q. And did -- were there -- did you indicate there were
9 some phones found also in the vehicle?

10 A. I believe there was.

11 Q. Do you know where those were found?

12 A. I do not recall.

13 Q. Did you recover them?

14 A. No, I did not.

15 Q. Do you know who did recover them?

16 A. No, I do not.

17 Q. Is there -- is there anything that you could look at
18 that would refresh your recollection about where those were
19 found?

20 A. I don't -- apparently there's no report or we don't have
21 a copy of my report from the incident, maybe it was on my
22 activity log from that day.

23 Q. So you, yourself, have not seen any indication in any
24 report that you have seen as to where those were found; is
25 that what you are saying?

1 A. As far as the cell phones?

2 Q. Yes.

3 A. I am not aware, no.

4 Q. Do you know who recovered them?

5 A. I believe that the task force may have recovered them
6 but I'm not 100 percent sure.

7 Q. But you know that they were recovered because somebody
8 told you that?

9 A. Yes.

10 Q. And you learned this, that they were recovered. Did you
11 know it that night?

12 A. I don't remember if I knew it that night or no. I
13 believe I did, yes.

14 Q. Okay.

15 A. But I know that there was -- I think there were other
16 property that was taken when we turned over the AR-15.

17 Q. While you were at the location, beside yourself and
18 Dedeluk --

19 A. Officer Dedeluk.

20 Q. -- and Hanna, who else was there?

21 A. I believe 2400 showed up who was the night captain for
22 the city, who that night I believe was Captain Serta, I
23 believe there was some MSP officers, there was also members
24 of the Violent Crimes and the task force.

25 Q. Okay. So at the scene of where the TrailBlazer came to

1 a stop was yourself and Dedeluk --

2 A. Dedeluk.

3 Q. -- and Hanna?

4 A. Yes.

5 Q. And the night captain?

6 A. Yes.

7 Q. MSP officers?

8 A. Yes.

9 Q. More than one?

10 A. I mean, initially, yeah, there was -- I don't even know,
11 maybe two or three MSP units.

12 Q. And then there were also members of the task force?

13 A. Yes.

14 Q. And how many?

15 A. I remember personally seeing two, I don't remember how
16 many were actually there.

17 Q. Do you know -- do you know who they were?

18 A. Honestly, no.

19 MS. MANNARINO: Nothing further. Thank you.

20 THE COURT: Okay. Thank you. Mr. Graveline?

21 MR. GRAVELINE: No further questions, Your Honor.

22 THE COURT: All right. Thank you, sir. You can
23 step down.

24 (Witness excused at 11:06 a.m.)

25 MR. GRAVELINE: The government rests subject to I

1 would also move for the admission of Government's Exhibit 4,
2 to be included in the record as well as for the Court's
3 consideration.

4 THE COURT: The LEIN printout?

5 MR. GRAVELINE: The LEIN printout, yes.

6 THE COURT: All right.

7 MS. MANNARINO: I'm sorry.

8 THE COURT: Any objection to receiving Exhibit 4?

9 MS. MANNARINO: None.

10 THE COURT: All right. The Court will received it.
11 (Government's Exhibit 4 received into evidence.)

12 THE COURT: Any other testimony, Ms. Mannarino?

13 MS. MANNARINO: No.

14 THE COURT: All right. Any argument?

15 MR. GRAVELINE: I think defense goes first since it
16 is their motion, Your Honor.

17 THE COURT: Okay. Ms. Mannarino?

18 MS. MANNARINO: Can I have just a minute, Judge?

19 THE COURT: Sure.

20 (An off-the-record discussion was held at
21 11:07 a.m.)

22 MS. MANNARINO: Thank you. It is our position,
23 Judge, that the arrest of Mr. Arnold that evening -- that the
24 stop of that vehicle and the subsequent search and arrest was
25 without requisite cause.

1 Now, I understand and I -- we laid this out in our
2 motion and brief in support. I understand what the law is,
3 and I understand that what we heard here today was that the
4 stop of that vehicle was going to happen regardless. The
5 arrest of the individuals in that vehicle was going to happen
6 regardless. The police had information that there is a
7 memorial service going on and they, on a mission, call
8 together 60 officers to surround this club, and they are
9 targeting people, and they are going to get their targets.

10 The officers indicate that the reason that the
11 vehicle that Mr. Arnold was a passenger in was stopped was
12 because they had information that the vehicle was a stolen
13 vehicle, but there's some problems we have with that. And
14 one is we now know that the vehicle on that evening was not,
15 in fact, a stolen vehicle. That Mr. Arthur was, in fact,
16 driving that vehicle with the consent and permission of the
17 owner of that vehicle, and that as he was driving that
18 vehicle it was not a stolen vehicle, he didn't have any
19 knowledge of that, and certainly Mr. Arnold, the passenger,
20 had no knowledge of that.

21 What the government wants us to do is say, well,
22 perhaps it was an error, perhaps it was just our lucky day
23 that that vehicle was never taken out of the LEIN, and that
24 it was an error; it should have been taken out, it wasn't
25 taken out, and we get to benefit from that, and I don't think

1 that that is correct. I don't think you get to benefit from
2 an error if you know that that is, in fact, the status of
3 that case -- or the status of that vehicle.

4 And what we have is officers who for at least -- or
5 agents who for at least a week to ten days, if not two weeks,
6 were planning this operation, and they knew exactly who they
7 were targeting, and they gathered together as much
8 information as they could about the people who were there and
9 what they were driving and what they were looking for. And I
10 submit to the Court that they -- if they didn't know they
11 should have known, and they can't, you know, obviously look
12 away from what they should have known and use that as a
13 pretext which is, I believe, exactly what happened here.

14 But, second, Mr. Arnold is a passenger. And again
15 what we heard of, regardless of whether or not we had any
16 information that he knew or should have known or could have
17 known, or had any connection with this stolen vehicle, the
18 bottom line was he was going to be arrested that night
19 regardless. He was going to be taken into custody whether or
20 not there was any indicia that he knew of the status of that
21 vehicle because that's what they told us. We were going to
22 use that to get custody of him so that we could further
23 investigate him because he went to a memorial service for a
24 friend of his, and we were going to use that opportunity to
25 take him into custody. That's what we heard.

1 After he is taken into custody and arrested, the
2 reason for the arrest, I mean, make no mistake about it, is
3 because he's in possession of a stolen vehicle which I submit
4 to the Court the officers knew or should have known was not,
5 in fact, a stolen vehicle, but after he is taken into custody
6 and arrested for being in possession, he is searched and, you
7 know, I'm not sure where because we haven't heard it where
8 any of these items were found, what was on his person, what
9 was in the vehicle but, again, then subsequent to items being
10 seized, what we have is a search warrant that is obtained,
11 and interesting enough the officer says that the search
12 warrant that is obtained to get into the phones, what they
13 are looking for, and it is laid out in the attachments, is
14 everything, all records, all information, everything and
15 anything they could possibly seize from these phones: You
16 know, identities, locations, contact information, statements,
17 text messages, e-mails, call-log history, everything and
18 anything that is within these phones they are asking for.

19 And what the officer -- or what the agent describes
20 as we -- he believes there were six phones that were
21 associated, but that's not what the search warrant says. The
22 search warrant is for ten phones because what they do is
23 within the context and confines of one search warrant is lump
24 in all of the phones that were recovered that night. There
25 are ten phones that detail the exact same information, and

1 they say we want everything and anything associated with
2 these phones that are associated with these people who happen
3 to be at a memorial for a friend that night.

4 It is our position that that search warrant does
5 not establish the requisite -- the affidavit in support of
6 that search warrant does not establish the requisite cause to
7 the broad search that was granted in this case, and we ask
8 that the Court grant our motion.

9 THE COURT: All right. Thank you, Ms. Mannarino.
10 Mr. Graveline?

11 MR. GRAVELINE: Thank you, Your Honor.

12 Counsel argues that the car should not have been
13 still in the LEIN system as reported stolen and argues that
14 it is therefore some type of error. However, there is no
15 facts establishing that on this record. What we have is the
16 car was reported stolen on September 7th, 2015, and a report
17 by the Detroit police was initiated on that day.

18 And Officer Dedeluk explained that the way the
19 Detroit reporting system works is you have your case number
20 and then you have your .1, that's the initial report and he
21 talked about that initial report, and then he talked about
22 how his report was the .2 and his partner's was the .3.

23 There is no evidence that Ms. Robinson went back to
24 the Detroit police and said no, no, my mistake, this car is
25 not reported stolen. The only evidence we have is she

1 reported it stolen on September 6th and that it was entered
2 on September 7th into LEIN as a stolen car.

3 The only evidence that we have on the record is
4 Agent Ruiz's testimony that after the car was stopped and he
5 talked to Ms. Robinson on October 5th is when she relayed to
6 him that she had some ongoing relationship with Mr. Arthur
7 and that the car should not have been reported stolen at that
8 point. So that's the timeline.

9 There is no evidence at all that Ms. Robinson did
10 anything -- reported any different fact to the Detroit police
11 prior to September 25th or 26th that this car was anything
12 but stolen. And the reason why that's important is it goes
13 to what do the officers know at the time of the stop. And
14 what the officers know at the time of the stop is that this
15 car was reported stolen. So there is no error. It was not
16 as if the Detroit police knew and just didn't enter it into
17 the database. There is no evidence that Ms. Robinson did
18 anything to take it out of that status with the Detroit
19 police. It is only in that subsequent conversation on
20 October 5th that she tells that to Agent Ruiz. So at the
21 time on September 25th and 26th all the Detroit police know
22 is we have a report of a stolen vehicle, so there is no error
23 in this case, and there is no benefiting from that error in
24 this case.

25 Also I think it was telling because Counsel said

1 they should not benefit from the error if you knew about the
2 error. I think Counsel highlights exactly what my argument
3 is; it goes to the Detroit police officers' knowledge on the
4 time at the time of the effected traffic stop in this case,
5 and consequently they definitely had probable cause to stop
6 that vehicle and investigate for possession of a stolen
7 vehicle. Consequently because they had that probable cause
8 it was reasonable to effect the arrest of Mr. Arnold on that
9 night, and therefore and consequently do the subsequent
10 searches that we briefed in our papers.

11 In terms of probable cause, once those phones are
12 seized legally on the night of September 25th or 26th, and
13 whether it was because it was the automobile exception that
14 we talked about in our papers, whether it is incident to
15 arrest, whether it is the subsequent inventory, or the
16 consent that the owner gave, those phones that were in the
17 car were going to be seized lawfully and they were seized
18 lawfully.

19 Now, I believe if the Court takes a look at
20 Agent Ruiz's affidavit in the case, Counsel argues we don't
21 know which phones came from where, but it is on page 20 --
22 I'm sorry, page 21 of Agent's Ruiz affidavit that spells out
23 of the six phones, five of them were found in the vehicle,
24 and the sixth one was located on the person of Mr. Arnold at
25 the time of arrest. Once those were seized legally, then it

1 is incumbent on Agent Ruiz to establish probable cause to
2 find the crimes that he was investigating, could be located
3 on those phones, and that's the affidavit.

4 And we believe based upon the arguments that we
5 made in our papers that he more than established probable
6 cause to find the evidence for the crimes that he was
7 investigating, and presented an affidavit that did establish
8 probable cause, that the magistrate was -- did properly find
9 probable cause, and as stated in the papers, even if not,
10 this is not that type of bare-bones affidavit or search
11 warrant that an officer cannot rely on, and then we would
12 rely on Leon as well, Your Honor. Thank you.

13 THE COURT: All right. Was there something
14 further?

15 MS. MANNARINO: No, Judge. Thank you.

16 THE COURT: The Court is satisfied that the motion
17 to suppress should be denied. I do agree that we are
18 addressing knowledge on the part of the officers involved in
19 the incident at the time of the stop and the arrest and,
20 indeed, the evidence falls short of establishing that they
21 knew or should of known that the car was not, in fact, stolen
22 when it was obviously reported stolen and not removed and no
23 information from the owner of the vehicle was made known to
24 the officers prior to the incident and operative time here.
25 The officers then had probable cause to stop, and it was

1 reasonable to arrest the defendant as an occupant of the
2 vehicle.

3 The government has outlined multiple theories of
4 analysis that would apply out of the auto exception. The
5 argument that this was an appropriate search incident to
6 arrest, the inventory search which was the subject of
7 testimony from the Detroit police officers, all of which
8 would support the conclusion that probable cause --
9 sufficient probable cause existed for the stop and the arrest
10 of the defendant, and ultimately Leon, which is the good
11 faith inevitable discovery arguments that are featured in the
12 briefs.

13 The Court is satisfied that given the deference
14 paid to the Magistrate Judge Patti in this case who issued
15 the search warrant permitting the download from the cell
16 phones that were found, five in the vehicle and one on the
17 defendant himself, that the additional search of the cells
18 phones likewise was conducted with the authority properly
19 extended and the warrants that were ultimately issued
20 permitting the search.

21 The Court will therefore deny the motion. I will
22 have a short opinion to append that would more thoroughly
23 analyze the issues presented by the briefs, and will get that
24 out as soon as possible, although the ruling today will not
25 be affected by the -- well, I'm announcing the ruling today

1 and the reasoning for that ruling will be more fully set
2 forth later.

3 Anything else, Ms. Mannarino?

4 MS. MANNARINO: I would inquire of the Court, the
5 Court is aware that I amended this motion to include another
6 argument, and I -- the prosecution has not responded to that,
7 and I will inquire of the Court as to how we are to proceed
8 with that issue.

9 THE COURT: Mr. Graveline?

10 MR. GRAVELINE: I was going ask the Court that
11 today as well. So as Counsel just mentioned, they amended
12 their motion as part of their reply to the government's
13 response. Normally the government is not allowed to file a
14 sur reply to that. I believe that the arguments raised in
15 the reply go to whether we need -- we, meaning the
16 government, needed to get a search warrant as opposed to a
17 2703(D) order to get historical cell site records.

18 That issue in the Sixth Circuit is controlled by
19 United States vs. Carpenter, which is binding precedent on
20 the Court. Now Carpenter is currently being appealed to the
21 Supreme Court. So I was going to seek the Court's guidance
22 on that whether, one, we could file a sur reply; two, if the
23 Court wants a sur reply on that issue or -- the way the
24 government views it, it appears that the defense is saving
25 that issue for appeal, any type of potential appeal, based

1 upon Carpenter. If Carpenter got overturned by the
2 Supreme Court they would still have that issue.

3 THE COURT: The Supreme Court has granted cert.

4 MR. GRAVELINE: That's correct, and so I was going
5 to leave it up to the Court whether you wanted the government
6 to file a response on that new issue recognizing it's really
7 kind of a sur reply, or whether we will -- our essential
8 response is going to be Carpenter is the controlling
9 precedent of the Sixth Circuit unless and until the
10 Supreme Court states otherwise.

11 THE COURT: Right. Yes. Ms. Mannarino, do you
12 acknowledge that absent Supreme Court action in this pending
13 case that the Court would be constrained by the Sixth Circuit
14 authority?

15 MS. MANNARINO: Judge, this is my answer: I don't
16 know. I don't know that I want to concede or that I'm able
17 to concede. You know, I will concede that Carpenter is, to
18 my understanding, the law of the land until and unless, but
19 I'm not sure that the factual framework might not -- what we
20 have here might not be able to be distinguished from
21 Carpenter, or that there might not still be an argument on
22 the basis of the factual scenario that we have here in the
23 state of the law.

24 So my response to the prosecutor's suggestion is
25 that the Court allow us an opportunity to further brief the

1 issue and flesh it out before we can make that determination.

2 THE COURT: Okay. Well, so I haven't heard any --
3 and you have not apparently addressed for yourself whether
4 this case is factually distinguishable from Carpenter as it
5 relates to the ruling that this cell tower data is -- can be
6 appropriately accessed by the government without a search
7 warrant, right?

8 MS. MANNARINO: Judge, all I can tell you is that I
9 wasn't prepared to argue it today, and I would like the
10 opportunity to look at it a little further. The reason we
11 amended the brief is because we got this information kind of
12 late and so I'm not prepared to fully argue it and address it
13 now, but I did want to raise the issue by way of the amended
14 motion.

15 THE COURT: Okay. All right. Well, I guess we at
16 least have the bones of potential argument that the facts in
17 this case are somehow distinguishable from the operative
18 facts leading to the holding in Carpenter. With that in
19 mind, I will provide for a pleading by the government and an
20 opportunity to respond by the defendant to that pleading, and
21 we will -- I will have the opportunity to address it before
22 we get underway with the trial.

23 MS. MANNARINO: I would appreciate that
24 opportunity. Thank you, Judge.

25 THE COURT: Okay. I think I'm likely, unless there

1 is something really startling in the briefing on this, I'm
2 likely to make a ruling without necessarily scheduling oral
3 argument, so you can keep that in mind as you draft your
4 pleadings.

5 MR. GRAVELINE: Understood, Your Honor.

6 THE COURT: Okay. All right. So with that I think
7 Mr. Arnold is also on the next motion; is that right?

8 MR. GRAVELINE: Your Honor, if I may, I'm going to
9 leave the courtroom to excuse the officers.

10 THE COURT: Okay. Sure. Maybe we will take a
11 break since we have to bring the other defendants up also.
12 Hopefully we will get it underway in another five or ten
13 minutes.

14 THE LAW CLERK: All rise. Court is in recess.

15 (Court recessed at 11:34 a.m.)

16 - - -

17 (At 12:00 p.m. Court reconvenes; Court, Counsel and
18 Defendants present.)

19 THE LAW CLERK: The United States District Court is
20 back in session.

21 THE COURT: No wonder I'm hungry, it's noon. Okay.
22 Would you like to state your appearances?

23 MR. WECHSLER: Good afternoon, Judge.
24 Justin Wechsler, along with Chris Graveline and
25 Julie Finocchiari, for the government.

1 THE COURT: Okay.

2 MS. MANNARINO: Good morning -- good afternoon.
3 Maria Mannarino on behalf of Mr. Billy Arnold.

4 MR. KOSELKE: Good afternoon. Eric Koselke on
5 behalf of Mr. Arnold also.

6 THE COURT: Welcome.

7 MR. MACHASIC: Good afternoon, Your Honor.
8 Ryan Machasic on behalf of Mr. Adams, who is present in court
9 and to my right.

10 MR. ARNONE: Good afternoon, Your Honor. May it
11 please the Court, Joseph Arnone on behalf of Mr. Gooch.

12 THE COURT: Welcome. You can all take a seat.

13 How are we going to proceed today?

14 MR. WECHSLER: Your Honor, it is the defendant's
15 motion so if they would like to --

16 MR. MACHASIC: Thank you, Your Honor.

17 THE COURT: Mr. Machasic.

18 MR. MACHASIC: Your Honor, quite simply, this is a
19 motion to suppress based on an affidavit that did not contain
20 probable cause. The government has argued that there is good
21 faith reliance in addition to arguing that there was probable
22 cause. However, that argument cannot prevail.

23 So when we look at Exhibit 1 to my motion, when we
24 look at the search warrant affidavit, he had included -- the
25 affiant has included I believe 42 separate accounts within

1 the one affidavit. Only a small portion of that deals with
2 the Account 23 which is the account of my client, Mr. Adams.

3 He speaks -- the agent who swore to the affidavit
4 speaks in generalizations. It is replete, and this is
5 mentioned in our motion, and it is also contained in some of
6 the earlier paragraphs 5, 6, 7, 15 of the affidavit, that
7 some members of gangs do X, Y, or Z; that some members of the
8 Seven Mile Bloods post on social media, that it is not
9 uncommon for gang members to associate with one another and
10 for some to retain weapons. And throughout the affidavit
11 Agent Horvath talks about weapons being stored at people's
12 homes, things that really have nothing to do with an
13 affidavit from a Facebook search.

14 So these kinds of generalizations don't -- he
15 doesn't then tie them in to that small portion of this
16 affidavit that deals with Account 23, which is the account at
17 issue in my motion. He does nothing to tie that -- to tie
18 these, even though they are generalizations, to tie those
19 generalizations to somehow showing that there are facts
20 supporting probable cause that there is going to be evidence
21 of a crime found within Account 23, Facebook records. It is
22 bereft of that.

23 And the things that -- the things that
24 Agent Horvath does include as to Account 23 are essentially
25 posting photographs of two former SMB members, one picture of

1 a current member -- or at the time current member, a picture
2 of a codeine bottle, the phrase 55, that's numeral 5, numeral
3 5, the phrase Blood Day, and a posting that someone was a
4 federal informant.

5 THE COURT: I'm sorry. What was the last --

6 MR. MACHASIC: A posting that someone was a federal
7 informant.

8 THE COURT: Okay.

9 MR. MACHASIC: That's all in paragraph 51 of the
10 affidavit, Your Honor. So none of these activities is
11 illegal. None of these can be tied, and he does, in fact,
12 not tie any of the allegations as to Account 23 to probable
13 cause that he's going to find evidence of a crime within the
14 documents for that account, and so really it was -- as to
15 this account it was just a bare-bones affidavit, a couple of
16 short sentences that just don't tie it in.

17 In addition, he talks about how codeine is used by
18 members of the SMB to create a drink called Sizzurp and Lean
19 or Purple Drank, and he almost seems like this is unique to
20 the SMB. As I'm sure the Court is well aware, this is not
21 unique to the SMB. It is not unique to Detroit. This is a
22 very popular drink all over the place. I mean, you know,
23 Little Wayne, Justin Bieber, a lot of people use this, it is
24 not unique to the Seven Mile Bloods.

25 And so when we look at this in context and we are,

1 of course, limited to the four corners in this argument
2 because it is a lack of probable cause argument, they don't
3 have enough. And it seems like what Agent Horvath was trying
4 to do was by saying that, okay, we have established that he's
5 a member or an associate of the SMB, and that's why he has
6 the 55 and the Blood Day included in there as well as
7 photographs of former, and at the time, a current member of
8 the SMB. However, as has been acknowledged and as was just
9 acknowledged by an agent earlier, it is not illegal to be a
10 member of the Seven Mile Bloods, it is not illegal to be a
11 member of a gang, and so that fact doesn't lend to an
12 inference that they are -- or a conclusion that they are
13 going to find evidence of a crime within this Facebook
14 account. It is completely bereft.

15 And that comment, of course, goes to the
16 government's good faith response. This was, in fact, as to
17 that account while I know that it is many, many pages and he
18 includes information about the investigation and background
19 things that really have nothing to do with Facebook, things
20 like people store drugs in their home or car or people would
21 keep a firearm in their home or a car, it really has nothing
22 to do with the Facebook record. But as to Account 23, that
23 paragraph 51, even tying it in with some of the prior factual
24 averments that he's made isn't enough, and so really that was
25 a bare-bones affidavit.

1 In addition, because there is so little as to
2 Account 23, that's paragraph 51 of the affidavit, his
3 reliance on that was not reasonable, it was not objectively
4 reasonable because that warrant as to that account is
5 deficient, so it is really what it comes down to. It is a
6 simple review of the affidavit and then whether he has
7 provided enough for probable cause to go search the Facebook
8 account, and in this case he hasn't because he has not tied
9 the prior general allegations, that some members or some gang
10 members do X, Y, or Z to that account, to the Account 23, and
11 so he did not act in good faith, he was not objectively
12 reasonable in relying on that affidavit in order to obtain
13 it.

14 Now, as part of the government's response, you
15 know, they seem to argue, and I'm sure that we will hear it
16 again today, that he should be congratulated simply for going
17 and getting a warrant, and that there is a danger that if the
18 Court were to suppress this that it sends a signal that, you
19 know, why bother to get a warrant. I don't think that is a
20 realistic policy consideration for this Court to take into
21 account. This agent was clearly aware of the fact that he
22 went to a warrant, he went to a federal magistrate to obtain
23 a warrant, but he did not include probable cause, it was
24 facially deficient, and so I do not think the good faith
25 applies.

1 I will say as to my argument regarding it not being
2 signed, before filing this I made several attempts to obtain
3 the signature page from the government. I saw that it was
4 attached, I was able to speak with government counsel, and so
5 I will withdraw the argument regarding the affidavit being
6 unsigned.

7 THE COURT: Okay.

8 MR. MACHASIC: Thank you, Your Honor.

9 THE COURT: All right. Thank you, Mr. Machasic.

10 Are we going to hear from the government on each or
11 am I going hear all of the defendants and then the
12 government?

13 MR. WECHSLER: Your Honor, preference I would
14 prefer is Ms. Mannarino address the Court or whoever wants to
15 address the Court, and then I will.

16 THE COURT: All right.

17 MS. MANNARINO: Well, on behalf of Mr. Arnold my
18 motion is substantially similar to co-counsel's, and I join
19 and I will adopt the arguments may by co-counsel and stand on
20 my brief. Thank you.

21 THE COURT: All right. Thank you.

22 MR. ARNONE: Your Honor, on behalf of Mr. Gooch, we
23 joined in as more of a procedural matter for our case so I
24 would just rely on Mr. Machasic's arguments, Judge.

25 THE COURT: Okay. Thank you.

1 MR. JOHNSON: Good morning, Your Honor.

2 Bertram Johnson on behalf of Devon Patterson, and I waive his
3 presence today, they forgot to bring him over today.

4 I join in, Judge, and concur with the arguments and
5 motions of brother counsel.

6 THE COURT: All right.

7 MR. JOHNSON: Thank you.

8 THE COURT: All right. Thank you. So that's it.
9 Mr. Wechsler?

10 MR. WECHSLER: Thank you, Judge.

11 Your Honor, we obviously set out in our brief all
12 of the relevant case law. I just want to go through the
13 arguments very briefly as Your Honor is obviously aware of
14 the relevant law.

15 From Gates we know that the magistrate simply needs
16 to make practical common sense determination whether or not
17 the circumstance at play, that there was fair probability of
18 evidence of a crime that would be found in a particular
19 place, in this instance the Facebook pages that are being
20 contested today.

21 Also under Gates this Court must decide whether or
22 not the magistrate had a substantial basis to conclude the
23 probable cause existed when the warrant was signed.

24 And under Allen, the Sixth Circuit, the Court has
25 to -- the Court should give great deference to the

1 magistrate. In other words, this Court simply has to find
2 whether under the totality of the circumstances probable
3 cause existed at the time the warrant was signed.

4 Your Honor, in the affidavit itself we have
5 probable cause to demonstrate that that crime would be --
6 evidence of a crime would be found in those pages,
7 specifically evidence of a RICO conspiracy. As such, there
8 was a nexus between the place to be searched and the criminal
9 activity. Agent Horvath in his affidavit set out his
10 training and experience, he discussed his other gang
11 relations, gang investigations, and then he set out why he
12 believed that the Seven Mile Bloods constituted an enterprise
13 for purposes of the RICO statute. He discussed meeting with
14 and discuss -- talking about the case with other witnesses,
15 with confidential informants who weren't deemed reliable by
16 the FBI, they had their information corroborated.

17 He then got into discussing his training and
18 experience regarding gangs of this nature and how they use
19 social media pages to promote their activity, to take credit
20 for the gang's activities, to communicate with each other.
21 And then he went further than that, he didn't just leave it
22 as a bare-bones training and experience, he discussed how in
23 this particular enterprise he had recovered information or
24 learned information that members of the Seven Mile Bloods
25 were using their social media accounts to do just that. So

1 he linked his training and experience to actual what happened
2 in these instances with this particular enterprise such as
3 posting gang colors, hand signs, memorials to dead members,
4 the structure of the gang, criminal activity.

5 As such, Judge, there was probable cause to believe
6 that members of this gang, members of this enterprise, would
7 be using their social media pages to promote the enterprise's
8 activity.

9 We don't need to get into the specifics of what
10 probable cause existed for each defendant, that's been laid
11 out in the affidavit, I reiterated it in the government's
12 brief, but suffice it to say that in each of the pages that
13 are being contested today there was evidence of gang signs,
14 colors, monickers, hand symbols, each one of those pages had
15 indicia of evidence that the members of the gang were using
16 these pages to at least promote the activities of the
17 enterprise itself.

18 And importantly, counsel mentioned that there were
19 42 accounts lumped in together in this affidavit. What's
20 important is that many of the pages at play here, they
21 communicated -- they were linked through Facebook to the
22 other members of the Seven Mile Bloods. Now that's obviously
23 important and should not be dismissed because it demonstrates
24 that they were using this social media to communicate with
25 each other. If they weren't linked to one another they

1 wouldn't have the opportunity to use Facebook messenger or to
2 post things and have other members to be able to see it. So
3 they used this medium to promote -- or possibly promote the
4 gang's activity and communicate with one another to do so.

5 As a result, Judge, there was more of a fair
6 probability that evidence of the RICO conspiracy would be
7 found within these Facebook pages itself, if not evidence of
8 specific racketeering activity at least there would be
9 evidence that these members -- these individuals were members
10 of the enterprise and were using the Facebook pages to
11 promote their activities and that evidence itself could be
12 used later at trial.

13 Your Honor, even if the Court finds that there was
14 no probable cause in the warrant itself, which obviously we
15 don't believe that's the case, we believe there was probable
16 cause for each one of these counts, under Leon of course the
17 result of this search warrant should not be suppressed.
18 There is absolutely no evidence that Agent Horvath acted in
19 bad faith at all. In fact, he acted in good faith by taking
20 his information to the magistrate and providing them with the
21 information that he believed would constitute probable cause.
22 There is nothing to demonstrate he knowingly supplied any
23 information in the affidavit that was anything less than
24 completely truthful. There is no evidence that the
25 magistrate abandoned their role when they signed the

1 affidavit. It was not facially defective.

2 And, again, based upon the factors that I set out,
3 it is subjectively reasonable that any well trained law
4 enforcement officer would look at this -- look at these
5 factors and say yes, there was probable cause to believe that
6 within these pages members who were -- who -- the owners of
7 the pages were promoting their enterprise. So at the very
8 least, again, a well trained officer would look at this and
9 say look, pictures that were public at the time Agent Horvath
10 looked at the page, that's demonstrative of what could be
11 found inside those pages and that evidence itself could be
12 used to establish the membership in the enterprise itself.

13 Additionally, Judge, when you look at various
14 Sixth Circuit cases in situations like this where Leon arose,
15 the Courts have said that the reviewing court should weigh
16 the egregiousness of the officers' conduct versus the loss to
17 the judicial system. In this case there is nothing to
18 demonstrate that there was any egregious conduct at all,
19 everything was out there for the magistrate to review.

20 If we were to suppress the evidence on the other
21 hand we would loss possible evidence of membership in the
22 enterprise which would, again, go to proving the RICO
23 conspiracy itself and membership in the RICO conspiracy. So
24 there would be nothing to deter by actually suppressing this
25 evidence under Leon and cases that follow it.

1 For those reasons, Your Honor, we believe that the
2 evidence that was recovered pursuant to the search should not
3 be suppressed, and the motions denied.

4 THE COURT: Can you explain to me why a warrant was
5 required in the first instance? Was there an expectation of
6 privacy? Was -- I know there's some difference between a
7 public posting and a private posting. Were these clearly
8 private postings?

9 MR. WECHSLER: For -- it depends. For Facebook you
10 can either make your profile completely public where anybody
11 who is also on Facebook can go in and look at any of the
12 photos you have posted or any comments that you have posted.
13 On the other hand, you can change your privacy settings so
14 that only if you are connected or friended with each other on
15 Facebook can you see those postings and those comments.

16 So what Agent Horvath was able to view was what was
17 actually made public to anybody on Facebook. So there was
18 obviously more material that was not made public and that's
19 why the warrant would have been required to see the material
20 that was not open to any member of the Facebook community.

21 THE COURT: So when you say that you believe the
22 relevance of the evidence contained in these Facebook
23 postings was to demonstrate membership, what about the
24 affidavit would support a finding that the -- that the
25 enterprise was a racketeering organization?

1 MR. WECHSLER: Well, Your Honor, what was laid out
2 in the affidavit was that Agent Horvath indicated he had
3 talked to numerous individuals as part of his investigation,
4 and based upon what he learned he believed that members of
5 Seven Mile Bloods constituted an enterprise under 1962. Now
6 obviously we'll have to prove that at trial, and that's an
7 issue for the jury. However --

8 THE COURT: What are the elements of 1962?

9 MR. WECHSLER: That each individual participated in
10 at least two activities of racketeering activity in the
11 enterprise itself, acting with a common goal to promote its
12 objectives.

13 So the evidence that would have been recovered in
14 the Facebook pages -- let me step back. The evidence does
15 not have to be indicative of a crime on its face, it can be
16 used to later prove a crime. The fact that these members
17 were throwing up gang signs and wearing certain colors
18 demonstrates at the very least they were using these pages to
19 show their membership in this gang. The evidence that could
20 have been recovered from those pages would then be used to
21 further prove that they were members of the conspiracy
22 itself, the enterprise itself.

23 So at the very least whether or not there was an
24 individual holding a gun that was used in a crime, at the
25 very least we would have evidence that these individuals were

1 members of that enterprise itself which we would then have to
2 prove at trial, but the pages would actually be useful in our
3 prosecution in reaching that goal.

4 THE COURT: All right. Thank you.

5 MR. WECHSLER: Thank you.

6 THE COURT: Any further argument?

7 MR. MACHASIC: May I just briefly, Your Honor?

8 THE COURT: Mr. Machasic, yes.

9 MR. MACHASIC: Just to address a couple points made
10 by brother counsel.

11 One, he seems to have hit on the fact that there
12 was a link and he says we cannot minimize the fact that there
13 was link. I don't know a lot about Facebook but I know that
14 these -- I think the link is called a friend, and so people
15 have, I mean, hundreds and thousands of friends, it is not
16 common, and this is from a fairly limited geographical area,
17 so the fact that you are linked I don't think gets him to
18 that probable cause to search the Account 23.

19 In addition, I don't -- I hope I didn't understand
20 the argument correctly, but to the extent that the argument
21 is that this Court should not suppress because the agent went
22 in and obtained a warrant and because we want to use the
23 evidence at trial, this is a four-corner's argument, Your
24 Honor. There is a Fourth Amendment violation and the remedy
25 for that is to suppress. So to say because the government

1 wants to now use this at trial because now we've got it
2 whether or not it was obtained in violation of my client's
3 Constitutional rights I think misses the point of the Fourth
4 Amendment. If we simply said every time there is not
5 probable cause and the agent did not act in good faith that
6 because the government wants to use the evidence we are going
7 to allow it in, that is not the proper standard and that's
8 not the proper remedy for depriving somebody of their
9 Constitutional right.

10 Those are the only few topics raised in the
11 response that I wanted to reply to. Thank you, Your Honor.

12 THE COURT: Thank you.

13 Mr. Wechsler, I didn't directly ask the question
14 concerning the bare-bones argument made by the defense. Can
15 you give me a concrete example of statements made in the
16 affidavit that go beyond bare-bones?

17 MR. WECHSLER: Sure. Let me just grab the
18 affidavit.

19 Regarding at least Account 23, Judge.

20 THE COURT: Account 3?

21 MR. WECHSLER: Account 23.

22 THE COURT: Involves all the defendants here.

23 MR. WECHSLER: No, it is Mr. Machasic's client.

24 THE COURT: Okay.

25 MR. WECHSLER: Your Honor, had the affidavit simply

1 said we believe they are members of the gang and therefore we
2 want evidence of gang membership, I think that would be
3 deemed bare-bones. In this case, we have specific
4 statements, at least in Account 23, where we have a posted
5 picture of a deceased member of the gang, we have an
6 individual of -- a posting of 55 which is a moniker used by
7 the gang to denote membership, and Blood Day which is also
8 used -- Blood Day is an event used by Seven Mile Bloods. The
9 fact that they are drinking Sizzurp, yes, multiple people
10 will be drinking Sizzurp but that's something this gang also
11 engages in. I don't think that alone is enough to get us to
12 probable cause, but I think taken into conjunction with the
13 other factors it leaves an objectively reasonable officer to
14 believe that there is probable cause that gang membership
15 activity will be inside this affidavit.

16 Additionally, Account 23 also posts that
17 Steven Arthur is a federal informant, and that was made on
18 one of the, quote/unquote, public viewings so that if you
19 weren't even friends with the individual, if you weren't
20 connected on Facebook, you would still see that Steven Arthur
21 was a federal informant according to the user of this
22 account.

23 So, in addition, it goes on and discusses media
24 correlation -- social media correlation or connection with
25 numerous others accounts which were described in the

1 affidavit itself, and I believe there's over 10 or 12 counts
2 that Account 23 itself was linked with that are also
3 discussed in the four corners of this affidavit and probable
4 cause is laid out for each one of those accounts as well.

5 So if you take all of that together in addition
6 with the training and experience that Agent Horvath
7 discussed, his knowledge about the gang in general, here you
8 have specifics that demonstrate how those pages and how those
9 colors and pictures and gang symbols are being used by
10 members of the enterprise, how these pages are being used by
11 members of the enterprise. So I don't think this is a
12 bare-bones affidavit, Judge. I think if you cut out the
13 other 41 accounts, which I don't think you can do because in
14 part they are corresponded as friends on Facebook, but even
15 if you cut out those other 41 accounts I think you would
16 still have probable cause to demonstrate that these users
17 were furthering their gang activity using that particular
18 page.

19 THE COURT: Okay. All right. Thank you.

20 MR. WECHSLER: Thank you, Judge.

21 THE COURT: This is a reasonable close call but the
22 Court is convinced that the search warrant that is subject to
23 this challenge is sufficient when you consider the general
24 allegations that are made, as argued by Mr. Wechsler,
25 together with the few specifics that involve the individual

1 defendants, that the warrant should be upheld, understanding
2 that the -- that the -- one thing I haven't quite resolved
3 because we are dealing with the Fourth Amendment issues and
4 the anchor of those kinds of decisions is the reasonableness
5 of a search and seizure in this instance, the -- whether this
6 is a public or a private site, even if private, is accessible
7 by anyone who is a friend, and the -- and so there may be
8 dozens of friends to say that there is an expectation of
9 privacy even to require a warrant under those circumstances
10 is, I think, at least an arguable issue, but that -- and I'm
11 going to issue a written opinion in this instance also to
12 explain further the Court's ruling, but given the totality of
13 the circumstances here the Court is persuaded that the --
14 that the warrant is something more than bare-bones and is
15 appropriately upheld. Their motion challenging the validity
16 of that warrant then is denied.

17 Okay. So I think that's all we have on for today.

18 MR. GRAVELINE: That's correct, Your Honor.

19 THE COURT: Okay. All right. We will see you at
20 the next round.

21 THE LAW CLERK: All rise. Court is adjourned.

22 (Proceedings concluded at 12:30 p.m.)

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CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of UNITED STATES OF AMERICA vs. BILLY ARNOLD, et al., Case No. 15-20652, on Thursday, August 31, 2017.

s/Robert L. Smith

Robert L. Smith, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 10/17/2017

Detroit, Michigan